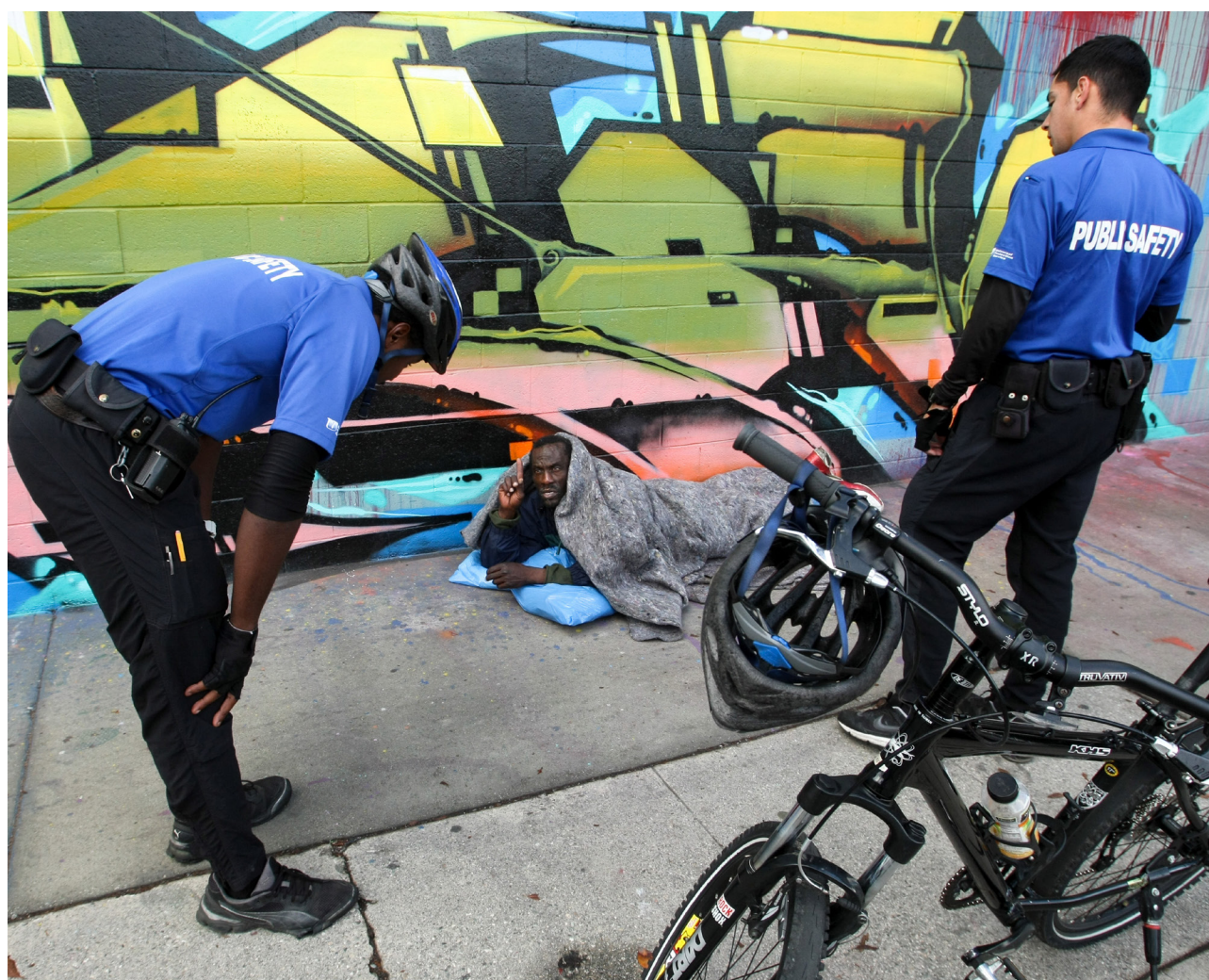


HOMELESS EXCLUSION DISTRICTS

HOW CALIFORNIA BUSINESS IMPROVEMENT DISTRICTS
USE POLICY ADVOCACY AND POLICING PRACTICES TO
EXCLUDE HOMELESS PEOPLE FROM PUBLIC SPACE



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EXECUTIVE SUMMARY

BUSINESS IMPROVEMENT DISTRICTS (“BIDs”) are private entities funded by local property assessments that play an increasingly large role in managing public space in California cities. First authorized by state law in the 1960s to help revitalize struggling urban areas, BIDs have grown considerably in number and influence, especially since 1994 when the State Legislature reduced public oversight of BIDs and expanded their assessment and spending authority. Today, approximately 200 California BIDs collect hundreds of millions of dollars annually in compulsory property assessment revenue, which they spend on a wide range of activities.

Researchers and policymakers have paid little attention to the rise of BIDs and their growing influence on municipal and state affairs. BIDs typically are located in downtown areas where businesses are concentrated. These same areas, especially in California, often have a high concentration of homeless people, including many people who are unsheltered. The interests and activities of BIDs and homeless people intersect and conflict in several important ways, including in the areas of public policy, policing practices, and social services.

In this report, we share research findings about the relationship between California BIDs and homelessness. We conducted a literature review, studied municipal laws that target or disproportionately impact homeless people, researched the legal framework authorizing BIDs, and surveyed BIDs in California’s 69 largest cities. To help interpret the data from these sources, we conducted in-depth case studies of eleven BIDs in the cities of Berkeley (2), Chico, Los Angeles, Oakland (2), Sacramento (2), San Diego, and San Francisco (2), including analysis of public records, interviews with BID officials, and surveys and interviews of homeless people.

Our key findings are that BIDs exclude homeless people from public spaces in their districts through policy advocacy and policing practices. BID involvement in social services is experienced by homeless people as an additional form of policing, surveillance, and harassment.

POLICY ADVOCACY: BIDs use property assessment revenue, including from public properties, to advocate for the enactment, preservation, and strengthening of local and state laws that punish people experiencing homelessness for engaging in life-sustaining activities that they have no choice but to undertake in public, such as sitting, resting, sleeping, and food sharing (“anti-homeless laws”). The proliferation of anti-homeless laws correlates strongly with the increase in the number and authority of BIDs since 1994.

POLICING PRACTICES: BIDs coordinate closely with local police departments—and sometimes use their own private security—to enforce anti-homeless laws and otherwise exclude or remove homeless people from their districts. In prior research, we found that such enforcement in California is growing and is increasingly based on homeless people’s status rather than their behavior. The rising enforcement of anti-homeless laws also correlates with the growing number of BIDs statewide.

SOCIAL SERVICES: While advocating for anti-homeless policies and enforcing anti-homeless laws, some BIDs work with homeless service providers and refer homeless people to services. Homeless people often experience such “help” as another form of policing, surveillance, and harassment. Considered in the context of their anti-homeless policy advocacy and policing practices, BID involvement in social services contributes to the exclusion of homeless people from business districts.

Our findings raise several legal concerns. When BIDs spend property assessment revenue on local and statewide policy advocacy, they may violate California law. BID spending on policy advocacy with revenue from assessments of publicly owned properties raises special statutory and constitutional concerns. Further, BID policing practices may violate the legal rights of people experiencing homelessness and expose BIDs to criminal liability.

Homelessness has reached crisis proportions in many California cities, and decades of government divestment from affordable housing and other public services is a leading cause. Like state and local lawmakers, business owners have a legitimate interest in helping to address the crisis. But our findings suggest that BID policy advocacy and policing practices to date have exacerbated the problem by excluding homeless people from public places without addressing the causes and conditions of homelessness. Several recommendations flow from our findings and legal concerns:

RECOMMENDATIONS

First, **THE STATE LEGISLATURE** should amend state laws that grant BIDs broad authority to collect and spend property assessment revenue and to operate largely independent of government oversight. Lawmakers should:

- (1) prohibit BIDs from spending property assessment revenue on policy advocacy and policing,
- (2) repeal BID authority to spend property assessment revenue on security (and thereby policing), and
- (3) restrict BID authority to assess revenue from publicly owned properties.

Second, **CITY GOVERNMENTS** should provide more careful scrutiny and regulation of BID activities within their jurisdictions. Existing state laws could be strengthened, but cities can act immediately to:

- (1) reject BIDs that propose to engage in policy advocacy or policing practices,
- (2) refuse to collaborate with BIDs that violate the rights of homeless people, and
- (3) disestablish BIDs that spend assessment revenue on policy advocacy and policing.

Third, **BIDs** should have greater accountability to all district residents and visitors. The state and cities should act to curb BID activities that harm homeless people, but BIDs should:

- (1) stop engaging in anti-homeless policy advocacy,
- (2) end policing practices that target or disproportionately impact homeless people, and
- (3) collaborate with homeless people, advocates, and service providers.

I. BUSINESS IMPROVEMENT DISTRICTS

BUSINESS IMPROVEMENT DISTRICTS (“BIDs”) developed as a response to mid-twentieth-century economic decline in U.S. cities.¹ As urban populations across the country dropped, so did property values, prompting national, state, and local efforts to revitalize city centers.² The federal government bankrolled urban renewal projects while local business and property owners formed downtown associations to compete with suburban shopping malls for business.³ California’s taxpayer revolt in the 1970s placed more downward pressure on local government revenue, further incentivizing the growth of urban business associations.⁴

Authorized by various state and federal laws, business associations took many forms, including local development authorities,⁵ enterprise zones,⁶ tax increment financing districts,⁷ and BIDs. BIDs were created as “privately directed and publicly sanctioned organizations that supplement public services within geographically defined boundaries by generating multiyear revenue through a compulsory assessment on local property owners and/or businesses.”⁸ Unlike redevelopment policies that cut taxes for businesses, or business associations that relied on voluntary dues, BIDs generate revenue by assessing all businesses or properties within a district.⁹

In 1965, the California Legislature enacted one of the first statutes in the country authorizing BIDs.¹⁰ The state currently has four such statutes—the Parking and Business Improvement Area Law of 1965, the Parking and Business Improvement Area Law of 1989, the Property and Business Improvement District Law of 1994, and the Multifamily Improvement District Law of 2004.¹¹ For reasons described more fully below, the 1994 law is the most relevant and influential BID enabling statute. A summary of each statute is provided in Appendix A.

The exact number of BIDs in California is unknown, as the state does not maintain a registry of such entities. However, we identified 189 BIDs in 69 California cities, most of which were formed after the 1994 law was enacted.¹² Under the 1994 law, property or business owners can petition their city council to form a district.¹³ The petition must include a “management district plan” specifying the boundaries, assessments, services, and governance of the proposed district.¹⁴ Before adopting resolutions to form a district or levy an assessment, the city council must provide notice of a public hearing to property or business owners who would be assessed in such a district.¹⁵ Those who would pay 50 percent or more of the assessment can block district formation as well as proposals to levy new or increased assessments.¹⁶

The State Legislature has increased BID influence through three key amendments to the early enabling laws. First, under the 1965 and 1989 laws, BIDs could collect revenue only from business license

fees.¹⁷ In contrast, the 1994 law authorized BIDs to collect revenue through city-administered property assessments.¹⁸ Based on available budget data from our case study BIDs, we estimate that BIDs in California annually collect hundreds of millions of dollars in property assessment revenue.¹⁹

Second, the 1994 law allows BIDs to spend assessment revenue on services such as security and sanitation, which were not authorized in the earlier laws.²⁰ Under the 1994 law, BIDs can also spend assessment revenue on economic development and “other services provided for the purpose of conferring special benefit upon [assessed properties or businesses].”²¹ As described below, such spending is now common in BIDs, including on private security.

Third, the 1994 law reduced cities’ overall management of BIDs. The 1965 law solely authorized cities to manage BIDs, but the 1994 law requires cities to contract with a private nonprofit corporation if the BID management district plan states that an owners’ association will provide services.²² Thus, cities’ primary role under the 1994 law is to approve proposed management district plans and to review BID annual reports.²³ The 1994 law also authorizes cities to dissolve BIDs under specified conditions and subjects the nonprofit organizations that manage BIDs to California’s public records and open meeting laws.²⁴

Significantly, California voters approved Proposition 218 in 1996, amending the Constitution to require that special assessment districts like BIDs confer “special benefits” to property owners subject to assessments.²⁵ A special benefit is “a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large.”²⁶ For example, street-cleaning services might provide BID property owners with a benefit unavailable to properties outside the BID and is therefore “special.” The Constitution also requires all BIDs to prepare an engineer’s report that details the special benefits of assessment-funded services.²⁷

In 1994, state lawmakers granted BIDs greater access to revenue, expanded BID spending authority, and reduced municipal oversight of BIDs. While the California Constitution requires that such assessments be used only for activities that result in “special benefits,” BIDs today operate as autonomous entities that engage in a broad array of activities largely independent of state and local oversight. In the next section, we describe our findings about the relationship between BIDs and the enactment and enforcement of laws that target or disproportionately harm homeless people.

II. RESEARCH FINDINGS

IN LIGHT OF THEIR GROWING ROLE in California cities, we researched the relationship between BIDs and the enactment and enforcement of laws that target or disproportionately harm homeless people (“anti-homeless laws”).²⁸ We report our findings from several sources, including:

- responses to a survey of 189 BIDs in 69 cities;
- data from in-depth case studies of eleven BIDs in Berkeley (2), Chico, Los Angeles, Oakland (2), Sacramento (2), San Diego, and San Francisco (2); and
- street outreach surveys and interviews of homeless people in Chico, Sacramento, and San Francisco.²⁹

For the BIDs survey instrument, see Appendix B; for the homeless outreach survey instrument, see Appendix C.

As described below, we found that BIDs exclude homeless people from their districts through policy advocacy and policing practices.³⁰ BIDs engage in policy advocacy to enact, preserve, and strengthen state and local anti-homeless laws.³¹ To enforce such laws, BIDs collaborate closely with local police departments and hire or contract with private security. We also found that some BIDs work with service providers in conjunction with their policy advocacy and policing practices, which often contributes to the exclusion of homeless people from public spaces.

A. BIDS AND POLICY ADVOCACY

Most of the BIDs reported engaging in policy advocacy in one form or another, including direct expenditures, staffing, and membership in a BID trade association.³² Just under half of the BIDs (46%) cited policy advocacy as one of their main expenditures, and almost one in three (31%) reported that they have a policy, advocacy, or government relations person on their staff.³³ More than one-third (36%) also reported that they are members of the California Downtown Association or the International Downtown Association, trade groups that advocate for the interests of BIDs.³⁴

The survey and case study data described below yield three findings about BIDs and policy advocacy:

1. BIDs frequently engage in local and state advocacy to enact, maintain, and strengthen anti-homeless laws;

2. BIDs spend property assessment revenue, including revenue from publicly owned properties, on anti-homeless policy advocacy; and
3. The growing number of BIDs established after 1994 correlates with a sharp rise in the number of anti-homeless laws.

1. BIDs advocate to enact, maintain, and strengthen anti-homeless laws

BIDs advocate at the local and state levels for their policy preferences on a variety of issues that they believe affect property owners. While we did not attempt to identify and catalog every type of policy advocacy in which BIDs engage, we found that BIDs seek to enact, maintain, and strengthen laws that criminalize activity like sitting, resting, sleeping, panhandling, and food sharing in public spaces. At the local level, BIDs often support or defend municipal anti-homeless ordinances by testifying at city council meetings and in other public forums.

Examples of BID involvement in local policy advocacy include:

- In 2010, San Francisco’s Union Square BID submitted letters of support and testified at numerous public forums for Proposition L, an anti-homeless measure to restrict sitting or lying on public sidewalks between 7 a.m. and 11 p.m. (so-called “sit-lie” laws).³⁵
- In 2012, the CEO of the nonprofit that manages the Downtown Berkeley BID was the major individual financial contributor to the campaign for Measure S, a proposed sit-lie law.³⁶
- In 2013, the Downtown Chico Business Association advocated for the enactment of a sit-lie law by testifying in front of the City Council, encouraging its members to attend a city council information-gathering meeting, and coordinating with the police department.³⁷
- In 2015, the Downtown Industrial BID advocated for Los Angeles to amend its municipal code to preserve the city’s ability to confiscate homeless people’s property.³⁸
- In 2016, the Downtown Sacramento Partnership urged the city to retain its anti-camping ordinance in the face of repeal efforts by homeless advocates.³⁹ The BID also vocally supported expanding Sacramento’s aggressive anti-panhandling ordinance.⁴⁰

BIDs also work together to oppose state-level civil rights legislation designed to decriminalize homelessness. Sometimes, BIDs advocate collectively through the California Downtown Association (“CDA”), a trade association that “represents thousands of diversified businesses throughout California within its network of downtown associations, cities, chambers of commerce, business districts, supportive vendors and consultants.”⁴¹ In recent years, the CDA actively mobilized its BID members to oppose Assembly Bill 5, the Homeless Person’s Bill of Rights and Fairness Act, and Senate Bill 608, the Homeless Right to Rest Act.⁴²

Individual BIDs may take the lead in organizing other BIDs to oppose state-level homeless rights legislation. For example, during the 2015–16 legislative session, the Downtown Sacramento Partnership (“DSP”) monitored bills, developed strategies, and coordinated positions with allied organizations to oppose SB 608 and two other bills designed to decriminalize homelessness. For example, Assembly Bill 718 would have prohibited the enforcement of city or county ordinances that penalize sleeping or resting in legally parked vehicles.⁴³ The DSP and other CDA members opposed AB 718 via letters, phone

calls, and personal contact with state legislators and their staff members as part of a coalition of business interests.⁴⁴

AB 718 died in the Senate following a late-night session in which Emilie Cameron, DSP's Director of Policy and Communications, worked closely with a lobbyist to maintain key "no" votes and abstentions from senators representing CDA districts.⁴⁵ In an email to a core group of CDA advocates, Cameron praised the coalition's role in halting the bill's progress:

Knowing that AB 718 (Chu) was up for a Senate floor vote this week, DSP has been active walking the halls of the State Capitol meeting with Legislators and sharing our concerns . . . We're happy to report we were successful! . . . This is a great example of the potential influence CDA has under the dome. We have a unique constituency and potentially a very strong voice that can sway Legislators on critical issues.⁴⁶

2. BIDs spend property assessment revenue, including revenue from publicly owned properties, on policy advocacy

As noted above, state law requires BIDs to describe how they calculate property assessments and spend assessment revenue, including the specific "improvements, maintenance, and activities" paid for with assessment revenue.⁴⁷ Unfortunately, the required management district plans, engineer's reports, and annual reports do not always indicate whether BID property assessment revenue is used to pay for policy advocacy. Further, the nonprofit organizations that operate BIDs collect and spend assessment revenue alongside funds from non-assessment sources, which makes it difficult to determine whether BIDs are complying with state law when they engage in policy advocacy.⁴⁸

We examined the most recently available engineers' reports from our case study BIDs. We found that on average approximately 16.8 percent of total assessment revenue in these eleven districts was derived from publicly owned properties, ranging from approximately 5 percent in three BIDs to more than 50 percent in San Francisco's Civic Center BID (Table 1).⁴⁹

| | |
|-----------------------------------|-------|
| Downtown Berkeley | 17.7% |
| Telegraph (Berkeley) | 21.6% |
| Downtown Chico | 18.1% |
| Downtown Industrial (Los Angeles) | 4.7% |
| Jack London (Oakland) | 23.3% |
| Lake Merritt (Oakland) | 4.6% |
| Downtown Sacramento | 17.5% |
| Midtown (Sacramento) | 7.4% |
| Downtown San Diego | 13.4% |
| Civic Center (San Francisco) | 51.7% |
| Union Square (San Francisco) | 5.2% |

Table 1: Percentage BID Assessment Revenue from Publicly Owned Properties

Examples of BIDs using assessment revenue to pay staff to work on policy advocacy include:

- San Francisco’s Union Square BID spends assessment revenue on policy advocacy under a category of services labeled “Marketing, Advocacy, Beautification and Streetscape Improvements,” and its executive director is a lobbyist registered on behalf of the BID with the City and County of San Francisco.⁵⁰
- Los Angeles’ Downtown Industrial BID does not mention policy advocacy in its planning documents, yet in its quarterly reports to the city, it classifies activities like testifying at city council meetings and meeting with council staffers as assessment-funded “Economic Development and Communications” programming.⁵¹
- Assessment-funded policy advocacy expenses in the Union Square BID, the Downtown Sacramento Partnership, and Oakland’s Jack London Improvement District represent the full or partial salary costs of various personnel who engage in policy advocacy.⁵²

In addition to specifying how BID revenue will be spent, engineer’s reports and management district plans must establish that assessed properties receive “special benefits” from each type of service offered by the BID.⁵³ BID officials who engage in policy advocacy sometimes described the special benefits of these activities in terms of representation: property owners benefit by having their views on many issues expressed to elected officials.⁵⁴ BIDs also frame their advocacy in pursuit of broad policy goals. For example, the Downtown Sacramento Partnership’s management district plan notes that all BID services are “focused on removing barriers and creating incentives that promote economic activity” and briefly mentions “advocacy for business-friendly policies.”⁵⁵

Properties within a BID may be assessed at different rates to reflect the services or benefits they receive by specific geographic area and/or property type.⁵⁶ For example, Sacramento’s Midtown Association BID does not use assessments on governmental entities to fund policy advocacy efforts because public entities “benefit to a lesser degree than parcels occupied by for profit businesses” insofar as “they do not enjoy the benefits of increased profits resulting from increased commerce.”⁵⁷ The Midtown BID’s engineer’s report further states that public entities “will not be assessed for or receive advocacy services because they are owned by the public agencies at which advocacy efforts are directed.”⁵⁸

Other BIDs do not make this distinction and assess public properties for policy advocacy services. For example, San Francisco’s Civic Center BID—where more than half of all assessment revenue comes from publicly owned properties—expressly states in its engineer’s report that all properties “will benefit from the improvements or services to be funded regardless of ownership including publicly owned parcels.”⁵⁹ The Downtown Sacramento Partnership BID also assesses public parcels within its district at the same rate as other similarly situated properties.⁶⁰

3. The growing number of BIDs established after 1994 correlates with a sharp rise in the number of anti-homeless laws

Almost 80 percent of California BIDs responding to our survey were established since the 1994 law expanded their ability to collect and spend revenue.⁶¹ In prior studies, we researched municipal anti-homeless ordinances in 82 California cities, which have enacted hundreds of such laws in recent

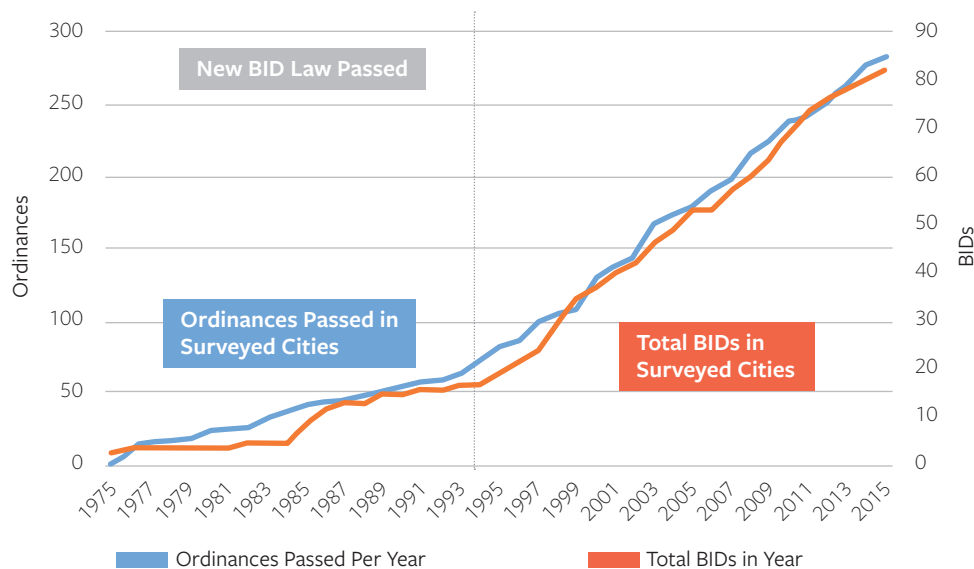


Figure 1: BIDs and Local Anti-Homeless Ordinances in California, 1975–2015

decades.⁶² Figure 1 charts available data about the rise in the total number of BIDs established with the growing enactment of local anti-homeless laws since 1975.⁶³

As depicted in Figure 1, the number of BIDs and the number of anti-homeless laws have risen since 1975, with an inflection point after the passage of the 1994 BID law. During the 20 years from 1975 to 1994, 13 BIDs were established and 61 anti-homeless laws were enacted, or approximately one BID and three laws per year. During the 20 years from 1995 to 2014, 60 BIDs were established and 193 anti-homeless laws were enacted, or approximately three BIDs and 10 laws per year. In other words, the number of BIDs and the number of anti-homeless laws have risen roughly three times more sharply in the 20 years since the 1994 law than in the 20 years prior to the law.

Available data do not permit us to establish a causal relationship between the rise of BIDs and the increase in anti-homeless laws. BIDs are only one actor that might have influenced the enactment of anti-homeless laws. However, the strong correlation together with our other data about BID activities—including BID descriptions of their successful policy advocacy efforts—suggest a positive relationship between BID policy advocacy and the rising enactment of anti-homeless laws.

B. BIDS AND POLICING PRACTICES

Almost all BIDs engage in policing practices that impact homeless people. More than 90 percent of BID survey respondents said that they work with local police to enforce laws.⁶⁴ More than two-thirds of BIDs reported using either paid security patrols (59%) or volunteer security patrols (9%) for safety and security.⁶⁵

BID policing practices appear to be driven by their perception that the presence of homeless people is a public safety issue. Over 80 percent of BIDs identified “panhandling and loitering” as “one of the most important issues that the BID has faced in terms of safety and security.”⁶⁶ Several survey respondents added written comments identifying “the perception of crime,” “public nuisance,” and “homelessness” as safety and security issues.⁶⁷

The survey and case study data reveal two key findings about the relationship between BIDs and anti-homeless policing practices:

1. BIDs collaborate with local police departments to enforce anti-homeless laws, and
2. BIDs directly enforce anti-homeless laws.

1. BIDs collaborate with local police departments to enforce anti-homeless laws

Almost all BIDs surveyed report collaborating with police departments to enforce local laws.⁶⁸ Sacramento BIDs exemplify this collaboration. From January through October 2015, Sacramento BID executives, high-ranking members of the Sacramento Police Department (“SPD”), and other city officials exchanged almost 2,000 pages of emails regarding homeless people.⁶⁹ Beginning in 2016, the Midtown BID’s Clean and Safe Coordinator participated in a “Weekly Hot Spot Collaboration” to list and report on “problem areas” frequented by homeless people.⁷⁰

Sacramento BID executives also emailed the SPD to request specific enforcement of laws prohibiting camping and loitering.⁷¹ For example, the executive director of one Sacramento BID emailed the police stating:

[There’s] been quite a few homeless hanging out behind the donut shop at 26th and Franklin again . . . Hoping you can help out. It seems odd that the donut shop owner [doesn’t] seem to mind this type of activity right behind his business?”⁷²

In fact, the Downtown Sacramento Partnership BID persuaded the Sacramento Police Department to realign a neighborhood beat with the BID’s boundaries.⁷³

BIDs also ask their cities and communities to provide more police officers in areas where anti-homeless laws are enforced:

- San Francisco’s Union Square BID lobbied for more police officers to enforce anti-homeless laws and received a \$3 million grant from the Silicon Valley Community Foundation “to increase police patrols during the holidays and to install security cameras.”⁷⁴
- The Downtown Chico Business Association partnered with the Chico Police Department and others to form the Clean and Safe Action Group, which requested and received increased police staffing to address “rising concerns about panhandling, aggressive behavior, loitering, vandalism, and camping.”⁷⁵
- The Downtown Oakland and Lake Merritt/Uptown District Association advocated successfully for the deployment of a new Oakland Police Department “Metro Unit” for the downtown corridor that works in partnership with the BID’s Ambassador Program and its Community Watch Program.⁷⁶

BIDs sometimes request that police remove homeless people from public spaces within their districts in the absence of alleged violations of law. In an email to a police official, one Sacramento BID executive asked, “Can someone swing by our building [. . .] and remove the homeless person hanging around in the corner?”⁷⁷ Another email from a Sacramento BID to a police lieutenant asked: “When one of your officers has a chance, could s/he please ask the homeless person who is sleeping in front of

Suite C/D to leave. They are sleeping on the concrete walkway with a hacking cough . . . not very enticing for customers.”⁷⁸ In a separate response forwarded to a BID official, one Sacramento police officer acknowledged that: “We are still struggling with having the legal authority and penal code to deal with [homeless people] at our RT bus stops.”⁷⁹

Consistent with BID calls for enforcement, homeless people experience substantial police interactions within BID boundaries. Sixty-two of 72 homeless people we surveyed who were living within BID boundaries in Chico, Sacramento, and San Francisco reported being approached by the police.⁸⁰ Some survey respondents described frequent encounters with the police in response to their presence in public:

- A homeless person in San Francisco’s Union Square BID stated: “Everyday BID employees ask me to move. [. . .] If I don’t move, [the] cops are called.”⁸¹
- “Nearly every time I’m sleeping, the cops approach me,” reported one homeless person in Chico. Another homeless person in Chico stated: “I am approached daily by the police. They won’t leave me alone. They threw me in jail.”⁸²

While we did not survey homeless people about their experiences outside of BID boundaries, our findings suggest that BIDs play a role in the significant police presence experienced by homeless people within their boundaries.

2. BIDs directly enforce anti-homeless laws

In addition to collaborating with police to enforce anti-homeless laws, BIDs enforce such laws directly. For example, employees of the Los Angeles Downtown Industrial BID (“DIBID”)’s Clean and Safe Program attempted to enforce the Los Angeles Municipal Code by confiscating homeless people’s property in Skid Row. Four Skid Row residents sued DIBID, its managing nonprofit, and the City of Los Angeles for violating constitutional due process rights by removing their property from public areas without prior notice or subsequent information as to where the property was taken.⁸³ In settling with the plaintiffs, DIBID and the City of Los Angeles agreed to restrict the scope of permissible confiscation, to provide notice and storage procedures when confiscation was allowed, and to limit City collaboration with the BID.⁸⁴

BIDs enforce anti-homeless laws and policies through a variety of employees and programs. First, some BIDs hire private security guards to police their districts:

- The Downtown San Diego Partnership’s private security company patrols the district on foot, bicycle, or by vehicle, to ensure “unimpeded access to the public right of way for citizens, visitors, and residents.”⁸⁵
- The Downtown Chico Business Association hired a private security company to serve as a “command presence,” and “a deterrent on private property” regarding alleged vandalism, loitering, and drug use.⁸⁶
- In Los Angeles, BID private security guards arrested a homeless person for sitting on the sidewalk, using citizen’s arrest rights as justification.⁸⁷

Second, nearly half of BIDs (47%) reported using “ambassadors” to police their districts.⁸⁸ BID ambassadors perform generalized visitor-assistance tasks in addition to patrolling and monitoring the dis-

trict.⁸⁹ Many ambassadors are private security guards who coordinate with local law enforcement.⁹⁰ They report suspicious behavior while also directly enforcing anti-homeless laws:

- The Downtown Sacramento Partnership’s Downtown Guides (ambassadors) “direct and assist visitors, serve as the eyes and ears for local law enforcement, and deter aggressive panhandling.”⁹¹ Their job description includes “[m]onitor[ing] assigned area[s] for persons breaking city/state codes and laws . . . [and] either report[ing] such individuals to the proper authorities or advis[ing] them of the statute which is being violated.”⁹²
- The Downtown Chico Business Association’s ambassadors seek “voluntary compliance on the rules/ordinances downtown, and engage with individuals as necessary to do so,” but also have a “communication protocol” with the police, under which the ambassadors “report crimes and refer certain behaviors to social service outreach teams.”⁹³
- San Francisco’s Union Square BID contracts with Block by Block (“BBB”) for safety services.⁹⁴ According to BBB, “one of the most pressing issues affecting Union Square is the visible presence of homeless persons and those persons involved in quality of life issues.”⁹⁵ BBB “safety ambassadors” patrol the district on bikes to deter “unwanted behaviors,” engage with homeless persons, and report “unwanted activities” to the police.⁹⁶

We found evidence that BIDs develop security programs and promote practices that identify, target, and monitor specific homeless individuals. For example, the Downtown Oakland and Lake Merritt/Uptown District Association directs its BBB “security ambassadors” to log panhandlers in a “Known Persons Database.”⁹⁷ In a 2015 document entitled “Top Quality of Life Issues Downtown,” the Oakland Association identified five homeless people by name and stated with respect to three of them that the BID was trying to “continually engage [the person]” and “make it clear [to the person] that [he or she] is not anonymous.”⁹⁸

For homeless people, BID policing efforts result in feelings of being surveilled and harassed:

- A homeless person in Sacramento’s Downtown Sacramento Partnership BID stated: “I heard [BID employees] on their walkie-talkies saying ‘they’re smoking here.’”⁹⁹
- A homeless person in Chico stated: “[The private security guards] have restrained me and don’t allow me to sit anywhere. They follow me and 100% they are not the police.”¹⁰⁰

More generally, homeless people often experience BID attempts to remove them as unjustified and cruel. One-third of respondents to a survey of homeless people in Chico, Sacramento, and San Francisco (33%) said they had been approached by BID employees and asked to leave the area. More than one in four respondents (26%) described being “hassled” or questioned.¹⁰¹

- A homeless person in the Downtown Sacramento Partnership BID stated: “I’ve seen [BID employees] call the police at the Cathedral where they pass out blankets . . . [They said] ‘We can’t have you lying here.’ But it was raining. And I was just trying to stay dry.”¹⁰²
- In the San Diego Partnership BID, a homeless man complained that a private security guard harassed people by ordering them to leave downtown areas even when there is “no infraction

of law,” and a homeless woman described how a private BID security guard ran his bike into her multiple times to wake her while she was sleeping in a public space.¹⁰³

C. BIDS AND SOCIAL SERVICES

In addition to policy advocacy and policing practices, BIDs report various forms of other involvement in homelessness policy and services. More than 40 percent of BIDs stated that they “engage in activities with homeless people” in their districts.¹⁰⁴ Ninety percent of those BIDs engaging in activities with homeless people reported that they refer homeless people to social services and/or partner with social services organizations to provide services.¹⁰⁵ In our survey of homeless people, however, 18 percent said that BID employees had referred them to services.¹⁰⁶

Through our case studies and research with stakeholders, we found that:

1. BIDs occasionally work with homeless service providers and refer homeless people to services.
2. BID service work is consistent with their anti-homeless advocacy and policing.
3. BID role in social services often contributes to the exclusion of homeless people.

1. BIDs occasionally work with homeless service providers and refer homeless people to services

Some BIDs report working with organizations that serve homeless people and serve on local homeless advisory bodies:

- The Downtown Oakland and Lake Merritt/Uptown District Association partners with the Alameda County TRUST Clinic to train ambassadors to refer people to the clinic.¹⁰⁷
- San Francisco’s Union Square BID contracts with a nonprofit organization that recruits homeless people to perform “beautification” tasks in the neighborhood in exchange for a non-cash stipend and access to case management and job training.¹⁰⁸
- Representatives from two Sacramento BIDs sit on the city’s Continuum of Care Advisory Board, which coordinates a broad range of nonprofit services to homeless people.¹⁰⁹
- Los Angeles’ citywide BID Consortium is represented on the Regional Homelessness Advisory Council, which provides “an enduring forum for broadbased, collaborative and strategic leadership on homelessness in Los Angeles County.”¹¹⁰

Some BIDs report referring homeless people to shelter or other resources:

- The Downtown Berkeley Association’s 2016 Annual Report tallies 2,166 “Referral[s] to Shelter/Resources” by BID ambassadors.¹¹¹
- The Downtown Sacramento Partnership BID reports that it manages a grant-funded Navigator Team that helped house 84 people in 2016.¹¹²

We do not have data from BIDs on the quality of referrals or on service outcomes. A 2015 study in San Francisco that included a survey of 351 homeless people and 43 in-depth interviews found that less than 12 percent of respondents forced to move by authorities were offered “services.”¹¹³ Further, when police (not BID employees) offered services to homeless people, they were most often provided with

a pamphlet, a sandwich, and occasionally a one-night shelter bed, after which people were back on the street without housing or food.¹¹⁴

In our outreach to homeless people, with a smaller sample than the 2015 San Francisco survey, 38 percent of survey respondents who were referred to services by BID employees found the referral “helpful.”¹¹⁵ Many survey respondents, however, also characterized referrals to service providers as not helpful for a variety of reasons.¹¹⁶ In particular, homeless people reported feeling discriminated against or dehumanized when interacting with BID employees:

- In San Francisco, one homeless person said that while some BID employees are respectful, others are “downright disrespectful” and “call us names.”¹¹⁷
- A homeless person in Sacramento said: “Aren’t you supposed to be City guides? Not out here harassing the homeless. Interrogating.”¹¹⁸
- One homeless person in Chico said: “[J]ust b[ecause] we are homeless, we are not second-rate citizens. I would like to be left alone.” Another stated: “They look at us like we’re trash.”¹¹⁹

2. BID service work is consistent with their anti-homeless advocacy and policing

The relationship between BIDs and homeless service providers is complicated. BID policy advocacy and policing practices are premised on the idea that laws criminalizing activities like sitting, resting, sleeping, and food sharing help homeless people. In this view, anti-homeless laws encourage homeless people to access social services:

- Proponents of Measure S, including the head of the Downtown Berkeley Association, argued that a proposed 2012 law criminalizing sitting and lying in public would “help people get social services,” even though the measure did not provide funding for or mention social services to homeless people.¹²⁰
- The Downtown Chico Business Association launched a 2013 “Generosity Campaign,” which encouraged people to give money to service providers rather than homeless people because “handouts increase the time an individual spends on the streets, delays treatment, and potentially encourages panhandlers to come to our community.”¹²¹
- In opposing the 2016 Homeless Right to Rest Act, which would have afforded civil rights protections to homeless people, the Downtown Sacramento Partnership’s Clean and Safe director said:

*We saw [the Act] as a real burden to working with the clients . . . [i]n Sacramento County, you lose 25 years of your life by being homeless—by having the right to rest on the streets. . . . [T]hat legislation, from just a humanity side, did not really fit [overall] with how we are trying to help individuals off the street.*¹²²

In prior research, we did not find evidence that the enforcement of anti-homeless laws encourage homeless people to access services or meaningfully helps them in any other way.¹²³ Our findings are consistent with recent research on “therapeutic policing,” which is designed to “push” homeless people into social services. Forrest Stuart’s five-year study of Los Angeles’ Skid Row found that “[f]or those on the receiving end, therapeutic policing feels less like helpful guidance and more like abuse.”¹²⁴

3. BID role in social services often contributes to the exclusion of homeless people

As noted above, we found that BID involvement in homeless service provision takes a number of forms. At least one BID sought to facilitate access to services near or within the BID's geographic boundary.¹²⁵ We also found at least one BID that—while opposing civil rights protections for homeless people—expressed support for affordable housing, including permanent supportive housing and other services for homeless people.¹²⁶ However, other BID outreach efforts appear to be directed at pushing homeless people out of BIDs.¹²⁷

In San Francisco, the Union Square BID attempts to move lawful (nonaggressive) panhandlers from the district.¹²⁸ Because such panhandling is not prohibited by law, BID ambassadors are instructed first to “inform the person that their behavior is not supported by downtown businesses and actually harms the image of downtown.”¹²⁹ If the person continues to panhandle, the ambassador is to then “stand approximately 15’ away from the panhandler educating the public not to give to panhandlers, but rather agencies that can help” and will “continue this around the panhandlers [sic] area (until they move outside of the district).”¹³⁰

In Sacramento, Wind Youth Services (“Wind”), a drop-in center for homeless youth, moved from North Sacramento to the Midtown District to better serve its target population.¹³¹ Almost immediately, the Midtown Association began documenting complaints related to Wind and the homeless youth population it served.¹³² The Midtown Association’s Executive Committee said that if loitering during and after Wind’s service hours continued, the Association would seek to “relocate Wind to eliminate the public nuisance.”¹³³

Consistent with the goal of relocation, the BID contacted the city to determine whether Wind was violating Sacramento’s zoning ordinance by feeding youth without a conditional use permit.¹³⁴ Wind relocated outside the BID shortly thereafter. According to a newspaper account, Wind’s Executive Director Suzi Dotson said that the drop-in center moved because of unaffordable rent, and that “the MBA played no role in Wind’s move to Oak Park.”¹³⁵ However, according to the Midtown Association’s executive director, the BID helped Wind search for a new location and made a small grant to assist with Wind’s relocation costs.¹³⁶

In 2017, all 11 Sacramento BIDs opposed an amendment to the city code that would have removed conditional use permitting requirements for churches and faith congregations hoping to serve as small temporary residential shelters for adults.¹³⁷ The letter cited the “unintended impacts rogue operators providing homeless services can have in our neighborhoods” as one reason for requiring conditional use permits for each small temporary residential shelter at or within 500 feet of a church or faith congregation.¹³⁸

III. LEGAL CONCERNS

OUR RESEARCH FINDINGS raise several legal concerns. First, BIDs violate California law when they spend property assessment revenue on policy advocacy that is not narrowly tailored to provide a special benefit to property owners in the district. Second, BIDs may violate additional state laws when they spend assessment revenue collected from public properties within their districts on policy advocacy. Finally, BIDs and their agents may violate state, federal, and international law through their policing practices, including infringing on the legal rights of homeless people.

A. BIDS VIOLATE STATE LAW BY SPENDING ASSESSMENT REVENUE ON POLICY ADVOCACY

The California Constitution requires that all assessment spending provide a “special benefit” for assessed properties in the district distinct from any benefits enjoyed by members of the general public.¹³⁹ When members of the general public—i.e., parties that do not pay BID assessments—benefit from BID services, the services are considered, at least in part, “general benefits.”¹⁴⁰ Thus, state law requires BIDs to identify the proportion of a total benefit rendered by a service that is a general benefit, and to fund that proportion using revenue from sources other than property assessments.¹⁴¹

BIDs may argue that conducting policy advocacy on behalf of district property owners is a special benefit that justifies the use of assessment revenue because it responds to owners’ needs.¹⁴² However, to be lawful, the benefits of BID policy advocacy must be properly and proportionally linked to district parcels or confined to district boundaries.¹⁴³ In our case study BIDs, we did not find one engineer’s report that adequately calculated the special and general benefits of policy advocacy.¹⁴⁴ This is likely because it is not possible to defensibly and consistently calculate the constitutionally required special and general benefits of advocacy meant to influence local or state law, which by its nature affects many people and properties inside and outside of BID boundaries.¹⁴⁵

Assessment districts can be dissolved for failing to adhere to constitutional requirements. In 2011, a California Court of Appeal dissolved a maintenance assessment district in part because the engineer’s report did not “establish that the general public within and outside the District would not receive some benefit” from services like “homelessness patrolling, Web site information, and special events [that] provide obvious benefit to the general public.”¹⁴⁶ The court noted that the report’s attempt to dismiss some of the general benefit as “minimal” did not meet the strict constitutional requirement that “only special benefits are assessable.”¹⁴⁷

In 2013, a Los Angeles Superior Court judge ordered the dissolution of the Arts District BID because its “economic development” activities, such as marketing, provided no special benefits.¹⁴⁸ In 2014, a coalition of BIDs successfully lobbied the State Legislature to expand the statutory meaning of special benefits so a benefit is deemed “special” even when it is not unique to assessed property owners and may include “incidental or collateral effects that benefit property or persons not assessed.”¹⁴⁹ Courts have yet to consider whether the amended statute is consistent with the California Constitution, which still requires conferral of a special benefit to assessed properties.¹⁵⁰

B. BIDS VIOLATE ADDITIONAL STATE LAWS BY SPENDING ASSESSMENT REVENUE FROM PUBLIC PROPERTIES ON POLICY ADVOCACY

The 1994 BID law permitted districts to collect assessment revenue from publicly owned properties and it increased BID spending authority. State law, however, does not authorize BIDs to spend assessment revenue from public parcels on all kinds of policy advocacy.¹⁵¹ In fact, state laws prohibit the use of public funds to support or oppose local or state candidates and ballot measures.¹⁵² Interpreting one such law, the California Supreme Court said: “A fundamental precept of this nation’s democratic electoral process is that the government may not ‘take sides’ in election contests or bestow an unfair advantage on one of several competing factions.”¹⁵³

In general, when BIDs use assessment revenues from publicly owned properties for policy advocacy, the public—as owners of assessed property—is being taxed to fund advocacy on behalf of businesses. We found specific instances in which BIDs or BID officials engaged in formal lobbying, support for ballot measures, and other policy advocacy.¹⁵⁴ We also found examples of BIDs and their officials making financial contributions in local elections.¹⁵⁵ Through the use and leveraging of assessment revenue from publicly owned properties, BIDs are spending government revenue to take sides in the democratic process.

BID use of public funds for policy advocacy may sometimes result in expenditures that local agencies themselves could not make. For example, under state law, cities and counties may spend public funds to lobby if the city or county has deemed passage or opposition of the legislation at issue to be beneficial or detrimental to the city or county.¹⁵⁶ When BIDs spend assessment revenues from publicly owned properties to lobby on issues that only their managing nonprofits have identified as priorities, they bypass legal requirements designed to ensure that taxpayer funds are used to advance the public’s interests.

C. BIDS VIOLATE THE RIGHTS OF HOMELESS PEOPLE THROUGH THEIR POLICING PRACTICES

The 1994 BID law expanded BID authority to spend assessment revenue on “private security, sanitation, graffiti removal, [and] street and sidewalk cleaning.”¹⁵⁷ As described above, we found that BIDs often hire private security guards and ambassadors to perform security and sanitation tasks, and they frequently collaborate with the police and other local agencies to police homeless people and their property. Under state law, companies that furnish private security guards and ambassadors are private patrol operators regulated by the Department of Consumer Affairs.¹⁵⁸

While private security guards and ambassadors may patrol public spaces, they are not peace officers, and they have no more authority to enforce laws than any other private citizen.¹⁵⁹ When BID per-

sonnel attempt to remove homeless people from public spaces, they may be committing crimes. Attempts to harass or remove homeless people can cause unwanted contact, as in San Diego where a BID private security guard tried to wake a homeless woman by running into her with his bike.¹⁶⁰ In Los Angeles and Berkeley, BID personnel assaulted homeless people.¹⁶¹

BID actors who confiscate the property of homeless people may violate state and federal law.¹⁶² In a 1999 lawsuit, Skid Row residents alleged that BID private security guards confiscated, destroyed, and damaged their possessions without notice or warning for the stated purpose of clearing and cleaning sidewalks.¹⁶³ As noted above, in 2014, Skid Row residents sued the DIBID, its managing nonprofit, and the City of Los Angeles alleging that BID “public safety ambassadors” and Los Angeles Police Department officers violated their constitutional rights by confiscating personal property without notice and without information as to where the property was taken.¹⁶⁴

More generally, BID policing activities can violate state, federal, and international law. Federal courts have held that it is cruel and unusual punishment to treat homeless people as criminals for performing necessary and unavoidable life-sustaining acts in public.¹⁶⁵ Enforcing anti-homeless laws may also infringe on people’s rights under domestic and international law, including their privacy and property rights and their freedom of speech, assembly, and movement.¹⁶⁶ Finally, many anti-homeless laws are vague and overbroad, which can result in arbitrary and unequal enforcement.¹⁶⁷

IV. POLICY RECOMMENDATIONS

BASED ON OUR RESEARCH FINDINGS AND LEGAL CONCERNS, we make several recommendations to end BID activities that exclude and harm homeless people. First, the State Legislature should amend state laws that have granted BIDs excessive authority to collect and spend property assessment revenue. Second, cities should more carefully scrutinize and regulate BID creation, activities, and disestablishment. Third, BIDs should have greater accountability to district residents and visitors.

A. THE STATE LEGISLATURE SHOULD AMEND STATE LAWS THAT GRANT BIDS EXCESSIVE AUTHORITY

The divestment of traditional public authority to private BIDs—entities the state does not regulate or even track—results in the promotion of business interests over other interests, with particularly harmful consequences for vulnerable populations like homeless people. The State Legislature should amend state laws that grant BIDs broad authority to collect and spend property assessment revenue and to operate largely independent of local management. In particular, the State Legislature should prohibit BIDs from spending property assessment revenue on policy advocacy, repeal BID authority to spend property assessment revenue on security, and restrict BID authority to assess revenue from publicly owned properties.

1. Prohibit BIDs from spending property assessment revenue on policy advocacy

The 1994 BID law authorizes BIDs to spend assessment revenues only on activities that confer a special benefit. In 1996, voters amended the California Constitution to state unambiguously that “only special benefits are assessable.”¹⁶⁸ Yet, we found that many BIDs neither acknowledge nor account for the general benefits conferred by their policy advocacy. BIDs engage in policy advocacy to influence state and local laws with wide-reaching effects to people who do not pay assessments and who may not reside within BIDs. The State Legislature should amend the 1994 BID law to prohibit the use of property assessment revenue for policy advocacy.

2. Repeal BID authority to spend property assessment revenue on security

The 1994 BID law authorizes BIDs to spend assessment revenues on private security. With this authority, BIDs have hired private security guards and ambassadors to enforce municipal anti-homeless laws and to police homeless people even when they are not violating any laws. Enforcing anti-homeless

laws does not address the complex issue of homelessness and makes it more difficult for homeless people to find housing. Moreover, BIDs should not be allowed to harass and remove homeless people from public spaces. The State Legislature should amend the 1994 BID law to prohibit expenditures of property assessment revenue on private security.

3. Restrict BID authority to collect revenue from publicly owned properties

The 1994 BID law greatly expanded BIDs' revenue base by authorizing the assessment of publicly owned properties. We found that BIDs collect significant revenue from such properties, which they use to fund a wide array of activities, including policy advocacy and policing practices. Although the California Constitution places the burden on local government to demonstrate that publicly owned properties should be exempt from assessment, the State Legislature should amend the 1994 BID law to clarify that BIDs may not collect assessment revenue from publicly owned properties for the purpose of policy advocacy or policing practices.

B. CITIES SHOULD MORE CAREFULLY SCRUTINIZE AND REGULATE BIDS

BIDs are approved by local elected officials and rely on city resources to collect assessment revenue. Cities should scrutinize BID activities to ensure that they do not promote the interests of business and property owners at the expense of other local constituents such as homeless people. Cities can require more detailed accounting of BID spending and activities at their establishment and during ongoing operations. They can reject BIDs that propose to engage in policy advocacy or policing practices, refuse to collaborate with BIDs that violate the rights of homeless people, and disestablish BIDs that spend assessment revenue on policing and policy advocacy.

1. Reject BIDs that propose to engage in policy advocacy or policing practices

Under the 1994 BID law, city councils must approve any BIDs that are established within their boundaries. Many California cities appear to approve BIDs with little scrutiny over their proposed activities. The general public has no say in the establishment of BIDs, so city governments must ensure that the interests of residents, including homeless people, are considered in the process. Cities can negotiate the terms and conditions of BID establishment. They should reject the establishment of BIDs that intend to engage in policy advocacy or policing practices, and they should memorialize expectations and policies in establishment resolutions and all management contracts between the city and the BID's managing nonprofit.

2. Refuse to collaborate with BIDs that violate the rights of homeless people

Although the 1994 BID law reduced local oversight of BIDs, cities can still influence BID operations. As a result of the 2014 lawsuit described above, the Los Angeles Police Department issued an internal guidance memo to officers instructing them to process allegations of theft by homeless persons like any other theft of property and to restrict the department's collaboration with DIBID. Cities do not need to formulate such policies only in response to litigation. They should act affirmatively to design and implement policies that restrict inappropriate departmental collaboration with BIDs to ensure that public resources are not used to exclude and harm vulnerable district residents and visitors.

3. Disestablish BIDs that spend assessment revenue on policy advocacy and policing

Under the 1994 BID law, cities may disestablish BIDs upon a finding that there has been a “misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district.”¹⁶⁹ BID policy advocacy and policing practices both raise significant legal concerns that can serve as the basis for disestablishment proceedings. As noted above, courts have dissolved assessment districts, including a BID, for spending assessment revenue on activities that failed to provide special benefits to property owners.¹⁷⁰ Cities need not rely on courts to dissolve BIDs—they should take independent action to disestablish BIDs engaging either in prohibited policy advocacy or in policing practices that violate the rights of homeless people.

C. BIDS SHOULD ASSUME GREATER RESPONSIBILITY TO ALL DISTRICT RESIDENTS AND VISITORS

Finally, BIDs should act as more responsible stewards of the public resources to which they have been granted access by state and local government. BIDs collect hundreds of millions of dollars in property assessment revenue and have an increasingly outsized influence on municipal affairs relative to other stakeholders, especially homeless people. To assume greater responsibility for the safety and health of all residents and visitors, BIDs should stop spending assessment revenue on policy advocacy, end all forms of policing activity, and collaborate with local homeless service providers to improve the well-being of all district residents and visitors.

1. Stop engaging in anti-homeless policy advocacy

BIDs spend property assessment revenue, including from public properties, on local and state policy advocacy. Such advocacy raises serious legal concerns, as described above. As a practical matter, BID efforts to enact, maintain, and strengthen laws that criminalize homelessness make life more difficult for homeless people. Savlan Hauser, Executive Director of Oakland’s Jack London Improvement District, described her office as a “community center” and added:

*We also focus on economic vitality. Homelessness is a major impediment to economic development for people experiencing homelessness. We think it’s part of our mission to help because we have an interest in economic development for everyone.*¹⁷¹

To advance economic development for everyone, BIDs should stop engaging in policy advocacy, especially advocacy for policies that harm homeless people.

2. End policing practices that target homeless people

BIDs work closely with local police to enforce laws against homeless people, and they employ paid and volunteer security guards and ambassadors to police their districts directly. These policing practices raise legal concerns described above, and policing is fundamentally a state and local government function. There is also no evidence that such policing practices help connect homeless people to services or otherwise promote their well-being. Criminalizing homeless people for activities they have no choice but to conduct in public creates another barrier to exiting homelessness. To reduce harm to

homeless people and increase the likelihood they can be housed, BIDs should end policing practices that target homeless people.

3. Collaborate with homeless people, advocates, and service providers

BIDs engage in anti-homeless policy advocacy and policing practices while sometimes referring homeless people to social services. BIDs also advocate against the presence of services and shelters for homeless people within their boundaries. Some BIDs have started to rethink this approach. One San Francisco BID executive director acknowledged the tension between BID support for exclusionary policies and their efforts to help homeless people:

I think you may have seen an evolution on how BIDs are responding to homelessness since we all first started . . . [In the past] some might have said ‘not here on my doorstep.’ But I think we’ve realized . . . that you have to help people where they’re at and point them in the direction of the social services . . . it’s not going to help them if you just move them from one doorstep to another.¹⁷²

BIDs should work closely with homeless people, advocates, and service providers to determine how best to support homeless residents.

V. CONCLUSION

WE REPORT FINDINGS from the first in-depth study of California's business improvement districts. BIDs were first authorized in the 1960s to replace government disinvestment in city centers. In 1994, state lawmakers greatly increased the authority of BIDs to collect and spend property assessment revenue, and they reduced government oversight of BID activities. With enhanced resources, authority, and autonomy, BIDs exercise a growing influence on municipal and state affairs, including through policy advocacy and policing practices.

Our key research findings are that BIDs engage in policy advocacy and policing practices that exclude homeless people from public space in their districts. These findings raise important legal concerns about how BIDs spend property assessment revenue, including revenue from publicly owned properties, and how they treat homeless people. Several recommendations flow from these findings and legal concerns for state lawmakers, city governments, and BIDs:

RECOMMENDATIONS

- (1) the **STATE LEGISLATURE** should amend state laws that grant BIDs broad authority to collect and spend property assessment revenue with little public oversight;
- (2) **CITY GOVERNMENTS** should more carefully scrutinize BID policy and policing activities at all stages from their initial formation through their operation and disestablishment; and
- (3) **BIDS** should have greater accountability to all residents and visitors in their districts, including homeless people.

Finally, we need more research. Because the state does not track them, we do not yet have a complete, accurate, and up-to-date picture of BIDs statewide. We do not know the number and types of BIDs, or how much money they assess, collect, and spend every year and for what purposes. Policymakers could also benefit from a clearer picture of how BIDs differ from other assessment districts in terms of their resources, authority, and autonomy from public oversight.

VI. APPENDICES

A. SUMMARY OF BID ENABLING STATUTES

| Year | Purpose | Assessments | Expenditures |
|------|--|-------------------------------|--|
| 1965 | Allow BIDs to levy business license assessments to fund services in addition to infrastructure. | Business License | <ul style="list-style-type: none"> • Parking facilities • Decoration of public places • Promotion of public events • Musical performances • General promotion of retail trade |
| 1989 | Aid “economically disadvantaged” businesses and expand acceptable expenditures. | Business License | <ul style="list-style-type: none"> • All expenditures authorized under the 1965 BID Law • Benches • Trash receptacles • Street lighting • Parks • Fountains • Promotion of tourism and other services benefiting businesses in the area |
| 1994 | Allow assessment of property owners in addition to business licenses and expand acceptable expenditures. | Business License and Property | <ul style="list-style-type: none"> • Expenditures authorized under prior BID laws • Public restrooms • Planting areas • Facilities or equipment to enhance security, security personnel, marketing, and economic development • Sanitation • Graffiti removal and “other services” conferring a special benefit upon properties or businesses within a district |
| 2004 | Allow assessment of multifamily residential properties and expand acceptable expenditures. | Business License and Property | <ul style="list-style-type: none"> • Expenditures authorized under prior BID laws • Maintenance and irrigation of landscapes • Marketing and advertising geared toward retaining and recruiting tenants • Managerial services for multifamily residential buildings • Supplemental building inspection and code enforcement services for multifamily residential buildings • Alteration of existing street size • Addition of ramps, sidewalks, plazas, and pedestrian malls • Rehabilitation or demolition of existing structures |

B. BID SURVEY INSTRUMENT

| |
|--|
| 1. Name of BID |
| 2. City |
| 3. Website |
| 4. Main Contact Name |
| 5. Main Contact Role |
| 6. Main Contact Email |
| 7. Main Contact Phone |
| 8. What is the name of the BID? |
| 9. What is the BID's city? |
| 10. What year was the BID legally established? |
| 11. Please provide a link to the BID's website. |
| 12. Who was the BID formed by? Check all that apply. |
| Local government |
| Business owners |
| Property owners |
| Other |
| 13. What is the BID's enabling statute? |
| Parking and Business Improvement Area Law of 1965 |
| Parking and Business Improvement Area Law of 1979 |
| Parking and Business Improvement Law of 1989 |
| Property and Business Improvement District Law of 1994 |
| Multifamily Improvement District Law |
| Other, please state: |
| Do not know |
| 14. What type of assessments does the BID collect? |
| Property |
| Business |
| Both property & business |
| Do not know |
| 15. What is the BID's filing status and administrative body? Check all that apply. |
| 501(c)(3) |
| 501(c)(4) |
| 501(c)(6) |
| Local/Municipal Government |
| Private agency |

Other

Do not know

16. Does the BID have a policy, advocacy, or governmental relations staff person? Y or N

17. Is the BID a member of any of the following associations? Check all that apply.

California Downtown Association

International Downtown Association

Neither

Other

18. Please list the BID's main expenditures. Check all that apply.*

Capital Improvements (e.g., installing pedestrian-scale lighting and street furniture; planting trees and shrubbery)

Consumer Marketing (e.g., producing festivals and events; coordinating sales promotions; producing maps and newsletters)

Economic Development (e.g., offering incentives such as tax abatements or loans to new and expanding businesses)

Maintenance (e.g., collecting rubbish; removing litter and graffiti; washing sidewalks; shoveling snow; trimming trees)

Parking and Transportation (e.g., managing a public parking system; maintaining transit shelters)

Policy Advocacy (e.g., promoting public policies to the community; lobbying government on behalf of business interests)

Public Space Regulation (e.g., managing sidewalk vending; discouraging panhandling; controlling vehicle loading)

Security (e.g., providing supplementary security guards; buying and installing electronic security systems; working with city police force)

Social Services (e.g., aiding the homeless; providing job training; supplying youth services)

Other, please state:

*Respondents were asked to indicate the percentage of the BID's funds spent on each expenditure.

19. Does the BID engage in activities with homeless people in the district? Y or N

20. If so, which of the following activities does the BID engage in? Check all that apply.

Connecting homeless people to social services

Partnering with social service organizations to provide services

Neither

Other

21. Does the BID track the number of homeless people in its district? Y or N

If yes, please indicate how many homeless people are in the district and the date of the most recent count.

22. Does the BID have an ambassador program?

Yes, we administer our own ambassador program.

Yes, we contract through a private agency to provide an ambassador program.

Yes, other (please state):

No

23. Does the BID keep records of ambassadors' interactions with homeless people? Y or N

24. Does the BID hire homeless people, or contract with organizations that hire homeless people, to perform duties for the BID? Y or N

If yes, please indicate what duties the BID hires them to perform.

25. What have been the most important issues that the BID has faced in terms of safety and security? Please check the three most important issues.

Homicide

Rape

Robbery

Assault

Theft

Vandalism/graffiti

Prostitution

Panhandling/loitering

Other

26. Which of the following has been used as a method to ensure safety and security? Check all that apply.

Paid security patrols

Volunteer security patrols

Working with the local police department to enforce laws

Closed circuit television/surveillance cameras

Computerized crime mapping

Neighborhood watch-type programs

Increase number of visitors/outdoor events

Sealing vacant buildings, rapid graffiti removal

Other

27. Do you have any additional comments? Please write them here.

28. Please include a link to the BID's most recent annual report.

29. Who may we contact with follow-up questions? Check all that apply.

Self

Other (please give name and contact info):

C. HOMELESS OUTREACH SURVEY INSTRUMENT

1. Do you know this is a Business Improvement District (BID) area? Y or N

2. How regularly are you approached by BID employees in this area?

Every time I come here

Almost every time I come here

About half the time I come here

Occasionally

Never

3. If you have been approached by a BID employee, what was the end result of the interaction? Choose one or more options that best describe what happened.

The employee asked me to leave the area

The employee called the police

The employee hassled me/asked me questions

The employee referred me to services

If so, what services were offered?

Were the services helpful? Y or N

Other (please describe):

4. How would you describe most of your interactions with BID employees: respectful or disrespectful?

Respectful

Disrespectful

Neutral

Comments:

5. If police were called during your interaction with BID employees, what was the end result of your interaction with police?

The police told me to leave the area.

The police wrote me a ticket. If so, for what?

The police arrested me. If so, for what?

The police used physical force. If so, what kind?

The police referred me to services.

If so, was the referral helpful? Y or N

Other (please describe):

6. How regularly are you approached by police in this area?

Every time I come here

Almost every time I come here

About half the time I come here

Occasionally

Never

Is there anything you would like to add about your experiences with business improvement districts or their staff?

NOTES

- 1 See Lorlene Hoyt & Devika Gopal-Agge, *The Business Improvement District Model: A Balanced Review of Contemporary Debates*, 1 *Geography Compass* 946, 948 (2007) (linking the arrival of BIDs to the decline of city and town centers, urban sprawl, new retail forms, shrinking local government tax bases, and a shift to public-private partnerships for revitalization efforts); see also Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 *Colum. L. Rev.* 365, 420 (1999) (arguing that BIDs are an effort to deal with the challenges associated with “suburbanization, new regional growth patterns, and a changing economy.”).
- 2 See Derek Hyra, *Conceptualizing the New Urban Renewal: Comparing the Past to the Present*, 48 *URB. AFF. REV.* 498, 502 (2012) (explaining that the decline of aggregate urban populations across the country was linked to white flight from expanding “Black Belts” in Northern and Midwestern cities).
- 3 See Hoyt & Gopal-Agge, *supra* note 1, at 947 (explaining that the first of these associations formed during the 1930s and 1940s and that they continued their activities during the 1950s and 1960s); see Briffault, *supra* note 1, at 457 (explaining that “[m]any BIDs are sponsored and managed by pre-existing public-private partnerships, chambers of commerce, merchants’ associations, and local development corporations” and that the affiliations between BIDs and such organizations “raise concerns regarding potential conflicts of interest, the improper utilization of BID funds and, in the case of BID managers, the actual time spent working for the BID.”).
- 4 See Jack Meek & Paul Hubler, *Business Improvement Districts in Southern California: Implications for Local Governance*, 29 *INT’L J. PUB. ADMIN.*, 31, 32 (2006) (arguing that California’s taxpayer revolt, embodied now in Article XIII A of the California Constitution, was an additional factor in the growth of BIDs in California).
- 5 Local development authorities were designed to alleviate blight in targeted areas through demolition, relocation, bond issuance, and investment. See NANCEY GREEN LEIGH, BROOKINGS INST., *THE STATE ROLE IN URBAN LAND REDEVELOPMENT* 19 (2003), <http://dls.virginia.gov/groups/VHC/meetings/2004Meetings/blight/092304/leigh.pdf>.
- 6 *Id.* at 16–17.
- 7 Tax increment financing districts generate funding for development projects by borrowing against future increases in property values. *Id.* at 18.

- 8 Hoyt & Gopal-Agge, *supra*, note 1, at 946. Although the BID model is unique, it has roots in two much older legal entities—special assessment and special purpose districts. See David Kennedy, *Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership*, 15 YALE L. & POL’Y REV. 283, 288 (1996) (arguing that the nineteenth-century ancestors of BIDs are the special assessment districts of the frontier west, which were designed to help manage water, and the municipal assessment districts of Eastern and Midwestern cities, which provided specific services, such as street paving, in Jacksonian defiance of centralized governmental authority); see also Briffault, *supra* note 1, at 414–20 (describing the BID as a mixture of the special assessment district, which also typically levies mandatory assessments on select properties, and special purpose districts, which are typically governed by independent boards and enjoy autonomy from local government).
- 9 See Kennedy, *supra* note 8, at 306 (distinguishing enterprise zones—which are principally designed to improve the poorest of neighborhoods—from BIDs, which often end up serving wealthier areas); see also Briffault, *supra* note 1, at 425 (arguing that BIDs are different from other local public-private development mechanisms in that they operate by increasing costs on businesses or property owners rather than offering tax cuts on the assumption that the benefits provided will offset the cost increase). Through compulsory assessments, BIDs solved the free rider problem that had plagued voluntary downtown associations. See Hoyt & Gopal-Agge, *supra* note 1, at 947 (describing how the “free rider” problem was the impetus for the enactment of Toronto’s BID enabling statute).
- 10 See CAL. STS. & HIGH. CODE §§ 36000–81 (Parking and Business Improvement Area Law of 1965).
- 11 See CAL. STS. & HIGH. CODE §§ 36000–81 (1965 BID law), 36500–51 (1989 BID law), 36600–71 (1994 BID law), 36700–45 (2004 BID law). The 1989 BID law repealed a 1979 BID law and retained the 1965 BID law’s establishment procedures. See CAL. STS. & HIGH. CODE § 36500 *et seq.* In addition to state statutes, some California charter cities have adopted their own local BID ordinances which augment or alter state law requirements. See, e.g., BERKELEY MUN. CODE § 7.94 *et seq.*, S.F. BUS. & TAX CODE arts. 15 & 15A, OAKLAND MUN. CODE § 4.48 *et seq.*, SANTA MONICA MUN. CODE § 2.38 *et seq.*, CULVER CITY MUN. CODE § 15.11 *et seq.*, SAN JOSE MUN. CODE § 14.31 *et seq.*
- 12 Fifty-four percent of BID survey respondents (32 of 59 responding to the question) reported that they were formed under the 1994 law, and 79% of BID survey respondents (65/82) reported that they were formed since 1994. Although the Multifamily Improvement District Law of 2004 is a BID enabling statute, we did not find a BID created under the statute.
- 13 CAL. STS. & HIGH. CODE § 36621(a).
- 14 CAL. STS. & HIGH. CODE § 36621(b).
- 15 CAL. STS. & HIGH. CODE § 36623.
- 16 CAL. STS. & HIGH. CODE §§ 36623(b), 36624, 36625.
- 17 CAL. STS. & HIGH. CODE §§ 36000 (stating the purpose of the 1965 statute is to “impose a tax on businesses”); 36060 *et seq.* (governing business license taxation under the 1965 statute); 36502 (stating the purpose of the 1989 statute is to “levy assessments on businesses”).
- 18 Compare CAL. STS. & HIGH. CODE §§ 36000 and 36502, with § 36601(c). See Meek & Hubler, *supra* note 4, at 34 (stating that according to BID experts, property assessments generate more revenue and are easier to administer than assessments on business licenses).

- 19 We derived the revenue estimate by extrapolating from a random sample of California BIDs. We calculated the mean assessment revenue across the sample and multiplied the mean by the total number of BIDs we identified. Since we did not identify all BIDs in California, the statewide estimate is likely conservative.
- 20 *Compare* CAL. STS. & HIGH. CODE § 36000, with § 36606.
- 21 *See* CAL. STS. & HIGH. CODE § 36606(d), (f).
- 22 *See* CAL. STS. & HIGH. CODE § 36651 (provision of the 1994 BID law providing that “[i]f the management district plan designates an owners’ association, the city shall contract with the designated nonprofit corporation to provide services.”). *Cf.* CAL. STS. & HIGH. CODE § 36003 (provision of the 1965 BID law providing that “[t]he city council shall have sole discretion as to how the revenue derived from the tax is to be used within the scope of the above purposes”).
- 23 CAL. STS. & HIGH. CODE §§ 36622 (describing the contents of the management district plan, which include the extent of the proposed assessment and services); 36623 (requiring notice and a public hearing where cities propose to levy new or increased assessments); 36624 (empowering cities to reduce proposed assessments); 36533 (requiring BIDs to submit to the parent city a purely forward-looking annual report that details any proposed changes to BID assessment, collection, or expenditures); 36622(h) (providing that a new district expires after five years and then after ten years each time it is renewed); 36670 (requiring the city council to notice a hearing on disestablishment if: (1) the council finds there has been a “misappropriation of funds, malfeasance, or a violation of law in connection with management of the district,” or (2) property or business owners who pay more than 50% of the assessments levied petitions for disestablishment).
- 24 CAL. STS. & HIGH. CODE §§ 36622(h) (providing that a new district expires after five years and then after ten years each time it is renewed); 36670 (requiring the city council to notice a hearing on disestablishment if: (1) the council finds there has been a “misappropriation of funds, malfeasance, or a violation of law in connection with management of the district,” or (2) property or business owners who pay more than 50% of the assessments levied petitions for disestablishment). Courts can also dissolve BIDs for failing to meet statutory or constitutional requirements. § 36612 (“An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act [open meeting law . . .] at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act [. . .] for all records relating to activities of the district.”).
- 25 CAL. CONST. art. XIII D § 4.
- 26 CAL. CONST. art. XIII D § 2(i).
- 27 *See* CAL. CONST. art. XIII D § 4(b) (stating that “[a]ll assessments shall be supported by a detailed engineer’s report prepared by a registered professional engineer certified by the State of California”).
- 28 For a comprehensive review of California’s anti-homeless laws, see MARINA FISHER ET AL., POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., CALIFORNIA’S NEW VAGRANCY LAWS: THE GROWING ENACTMENT AND ENFORCEMENT OF ANTI-HOMELESS LAWS IN THE GOLDEN STATE (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2558944 [hereinafter PAC California’s New Vagrancy Laws 2015], and SASHA FELDSTEIN ET AL., POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., CALIFORNIA’S NEW VAGRANCY LAWS: THE GROWING ENACTMENT AND ENFORCEMENT OF ANTI-HOMELESS LAWS IN THE GOLDEN STATE (2016 Update),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2794386 [hereinafter PAC California's New Vagrancy Laws 2016].

- 29 We report all survey data as a percentage of BIDs responding to the specific question in our survey, not as a percentage of all BIDs surveyed. Response rates varied by question. All survey responses are on file with the clinic.
- 30 For a description of the role of BIDs in excluding “undesirable” members of society such as homeless people from public space, see ALEX GLYMAN, *BLURRED LINES: HOMELESSNESS & THE INCREASING PRIVATIZATION OF PUBLIC SPACE*, SEATTLE UNIVERSITY SCHOOL OF LAW, HOMELESS RIGHTS ADVOCACY PROJECT (Sara K. Rankin ed., 2016), <https://ssrn.com/abstract=2776876>.
- 31 Our prior studies, and those conducted by other researchers, have documented how such laws in California are inhumane, ineffective, and costly. See PAC California's New Vagrancy Laws 2015 and PAC California's New Vagrancy Laws 2016, *supra* note 28 (documenting the rising enactment and enforcement of anti-homeless laws in California); and CHRIS HERRING & DILARA YARBROUGH, *COAL. ON HOMELESSNESS, S.F., PUNISHING THE POOREST: HOW THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES POVERTY IN SAN FRANCISCO 2* (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620426 (documenting the criminalization of homelessness in San Francisco, California). Studies nationally and in other states have found similar harmful impacts of anti-homeless laws. See NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *NO SAFE PLACE* 18-26 (2014), https://www.nlchp.org/documents/No_Safe_Place [hereinafter NLCHP No Safe Place] (documenting the increasing criminalization of homelessness nationally); JUSTIN OLSON, ET AL., SEATTLE UNIVERSITY HOMELESS RIGHTS ADVOCACY PROJECT, *WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT* (2015), <https://ssrn.com/abstract=2602318> (documenting the criminalization of homelessness in Washington); ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC, YALE LAW SCHOOL, “FORCED INTO BREAKING THE LAW”: THE CRIMINALIZATION OF HOMELESSNESS IN CONNECTICUT (2016), https://law.yale.edu/system/files/documents/pdf/news/criminalization_of_homelessness_report_for_web_full_report.pdf [hereinafter Forced into Breaking the Law] (documenting the criminalization of homelessness in Connecticut); NANTIYA RUAN, STURM COLLEGE OF LAW HOMELESS ADVOCACY POLICY PROJECT, *TOO HIGH A PRICE: WHAT CRIMINALIZING HOMELESSNESS COSTS COLORADO* (2016), <https://ssrn.com/abstract=3169929> (documenting the criminalization of homelessness in Colorado); and OREGON AMERICAN CIVIL LIBERTIES UNION, *DECRIMINALIZING HOMELESSNESS: WHY RIGHT TO REST LEGISLATION IS THE HIGH ROAD FOR OREGON* (2017), https://aclu-or.org/sites/default/files/field_documents/aclu-decriminalizing-homelessness_full-report_web_final.pdf (documenting the criminalization of homelessness in Oregon).
- 32 Policy Advocacy Clinic, Berkeley Law, Univ. of Cal., Survey of 189 California BIDs (Spring 2017) [hereinafter PAC Survey of California BIDs] (on file with clinic). We use the term “policy advocacy” to refer broadly to actions taken to influence legislation or policy that may not meet federal, state, or municipal legal definitions of lobbying. For example, offering public comment at a city council meeting or writing a letter to a state legislator are forms of policy advocacy that may not necessarily constitute lobbying.
- 33 *Id.*
- 34 *Id.* See CAL. DOWNTOWN ASS'N, <http://californiadowntown.com/> (last visited Dec. 27, 2017); INT'L DOWNTOWN ASS'N, <https://www.ida-downtown.org/eweb/> (last visited Dec. 27, 2017).
- 35 Proposition L passed with 54.3% of the vote. *Results Summary: November 2, 2010–Consolidated General Election*, CITY & COUNTY OF S.F. DEP'T OF ELECTIONS, <http://www.sfelections.org/results/20101102/> (last visited Mar. 5, 2017). BID representatives testified before the Board of Supervisors' Public Safety Committee and the

Planning Commission. Union Square Business Improvement District (“USBID”) Lobbying Tracking Form (Apr. 18, 2010) (on file with clinic); USBID’s Board of Directors Regular Meeting Minutes (Sept. 16, 2010) (on file with clinic); USBID’s Public Affairs Advocacy & Advisory Committee 2010 Accomplishments (July 8, 2011) (on file with clinic). Proposition L is codified at article 2, section 168 of the 2010 San Francisco, California, Police Code.

- 36 Downtown Berkeley Association’s CEO John Caner provided a \$5,000 interest-free loan to the campaign, plus an additional \$530 to cover payments for canvassers. California Form 460 Statement Covering the Period from October 21, 2012 through December 31, 2012 (filed electronically on Nov. 6, 2013). Following the election, the Berkeley Fair Campaign Practices Committee investigated the Yes on S campaign because Caner “admitted to paying 52 homeless people in cash on election day to campaign against themselves.” Carol Denney, *Downtown Berkeley Association CEO John Caner Investigated for Campaign Violations*, STREET SPIRIT (Oct. 3, 2013). Prior to the election, Caner expressed his desire for “a system in which [BID] ambassadors would quietly shoo homeless people away from the city’s main commercial districts, making them cleaner and more pedestrian-friendly, while creating an uptick in foot traffic to bolster local businesses.” Rachel Swan, *Unfounded Fears*, EAST BAY EXPRESS (Oct. 3, 2012). The “Yes on S” campaign was eventually fined for the violations. Emilie Raguso, *\$2,750 Fine Assessed After Measure S Campaign Violations*, BERKELEYSIDE (Jan. 16, 2014), <http://www.berkeleyside.com/2014/01/16/2750-fine-assessed-after-measure-s-campaign-violations>.
- 37 The Clean and Safe Action Group is an advocacy body consisting of the Downtown Chico Business Association, the Chico Chamber of Commerce, and the City Police Department. At an initial presentation to the City Council, the Clean and Safe Action Group complained of an inability to address “transients” downtown. See Minutes of Chico City Council, Item 4.5 (Mar. 5, 2013), http://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=373&meta_id=31388 (Lieutenant Jennifer Gonzales noting absence of a Sit-Lie Ordinance). The Clean and Safe Action Group then mobilized its members to attend a City Council study session. See *Ten Things You Can Do to Change Downtown Chico*, CLEAN & SAFE CHICO BLOG (Oct. 22, 2013) (on file with clinic) (“Tonight’s council study session is a great opportunity to let your voice be heard. There is mounting frustration with vagrancy downtown and the effect of anti-social (and criminal) behavior.”). At the one-year review of Chico’s Sit-Lie Ordinance, Chico Chamber of Commerce President Katie Simmons stated that “Clean and Safe was initially the group that brought forward the concept of the Sit-Lie in partnership with the Police Department.” See also Minutes of Chico City Council, Item 4.2 (Dec. 16, 2014), http://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=525.
- 38 The Downtown Industrial BID (“DIBID”) made several appearances before the City Council and its committees to support an amendment to Los Angeles Municipal Code Section 56.11. See *City Council Meeting—Tuesday*, CITY OF L.A., CAL. (Jan. 20, 2015), http://lacity.granicus.com/MediaPlayer.php?view_id=129&clip_id=14105 (DIBID Executive Director Raquel Beard addressing the Council); *City Council Meeting—Tuesday*, CITY OF L.A., CAL. (Nov. 17, 2015), http://lacity.granicus.com/MediaPlayer.php?view_id=129&clip_id=14105 http://lacity.granicus.com/MediaPlayer.php?view_id=129&clip_id=15299 (Executive Director Beard addressing the City Council); *Public Works & Gang Reduction Committee Meeting*, L.A. CITY (Jan. 25, 2016), http://lacity.granicus.com/MediaPlayer.php?view_id=46&clip_id=15489 (Executive Director Beard addressing the Public Works & Gang Reduction Committee meeting); L.A. CITY, *Homelessness & Poverty Committee Special Meeting*, L.A. CITY (Mar. 17, 2016), http://lacity.granicus.com/MediaPlayer.php?view_id=46&clip_id=15646 (Executive Director Beard addressing the Homelessness and Poverty Committee meeting).
- 39 Letter from Michael Ault, Executive Director, Downtown Sacramento Partnership (“DSP”), to Kevin Johnson, Mayor of Sacramento, and Sacramento City Council Members (Feb. 8, 2016) (on file with clinic).

- 40 Ryan Lillis, *Is a Crackdown on Aggressive Panhandling Coming to Sacramento?*, SACRAMENTO BEE (July 24, 2017), <http://www.sacbee.com/news/local/news-columns-blogs/city-beat/article163340968.html>. The ordinance was adopted in November 2017 with the support of the Downtown Sacramento Partnership and other business groups. Ryan Lillis, *As Complaints Mount, Sacramento Will Crack Down on Panhandling*, SACRAMENTO BEE (Nov. 14, 2017), <http://www.sacbee.com/news/local/news-columns-blogs/city-beat/article184687023.html>. In April 2018, homeless advocates sued the City to prevent enforcement of the ordinance. Sam Stanton & Ryan Lillis, *Sacramento Hit with Federal Lawsuit Seeking to Overturn City's Panhandling Ordinance*, SACRAMENTO BEE (Apr. 12, 2018), <http://www.sacbee.com/news/local/homeless/article208595844.html>.
- 41 Thirty-five percent of CDA members are BIDs and other merchant associations. *Membership*, CAL. DOWNTOWN ASS'N, <http://californiadowntown.com/membership/> (last visited Dec. 14, 2016).
- 42 *Legislation*, CAL. DOWNTOWN ASS'N, <http://californiadowntown.com/legislation/> (last visited May 12, 2018) ("Our position, is to OPPOSE this proposal [SB 608]. It is essentially a rehash of AB 5 which we opposed last year along with many CDA members, and thankfully was soundly defeated. [. . .] Note that [the bill] states that there is no opposition, but since this summary was prepared the California BID community has mobilized and many of our members already have sent opposition letters. We are urging all CDA members to please write to State Senator Carol Liu's office to oppose SB 608. A sample letter template for you to put on your BID letterhead and fill in your specific information can be accessed by clicking here . . . "). AB 5 and SB 608 would have extended certain civil rights protections to homeless people. *AB 5 Homelessness*, CAL. LEGIS. INFO., https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB5 (last visited June 6, 2018); *SB 608 Homelessness*, CAL. LEGIS. INFO., https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB608 (last visited June 6, 2018).
- 43 *SB 876 Homelessness*, CAL. LEGIS. INFO., https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB876 (last visited June 6, 2018); *AB 718 Local Government: Powers*, CAL. LEGIS. INFO., https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB718 (last visited Dec. 15, 2016).
- 44 DSP officials sent multiple emails in 2015-16 to state legislators, legislative staff members, and other organizations and associations opposing SB 876 and AB 718 (on file with clinic). The CDA also actively opposed AB 718. Letter from Lauren Schlau, President, CDA, to Honorable Kansen Chu, Cal. State Assembly (Aug. 12, 2015) (on file with clinic).
- 45 The DSP and CDA do not appear to employ a registered lobbyist or to register with the state as lobbyist employers. Emails indicate that in relation to AB 718, DSP may have been working with a registered lobbyist. See Email from Michael Ault, Executive Director, DSP, to Jason Bryant, Principal Consultant, Bryant Government Affairs (Nov. 20, 2015) (on file with clinic). On September 10, the DSP sent an email alert to select BIDs requesting immediate action to help defeat the bill: "*The author of AB 718 is possibly making a last minute effort to bring the bill back. We will know within the hour, in the meantime we've identified the top three senators who's [sic] votes may be in play, we encourage you to contact their office right way [sic] to reiterate your concerns with the legislation . . .*" Email from Emilie Cameron, Public Affairs & Communications Director, DSP, to Michael Ault, Executive Director, DSP, and Dion Dwyer, Director of Community Services, DSP (Sept. 10, 2015) (on file with clinic). Based on subsequent email traffic, BIDs from Los Angeles, Santa Cruz, and Santa Barbara responded to DSP's request and lobbied senators during the bill's final hours (on file with clinic).
- 46 Email from Emilie Cameron, Public Affairs & Communications Director, DSP, to CDA member PBIDs (Sept. 2, 2015) (on file with clinic).

- 47 CAL. STS. & HIGH CODE §§ 36621 (requiring a management district plan), 36622 (specifying plan contents), 36650 (requiring annual reports); CAL. CONST. art. XIIIID § (4)(b) (requiring engineer's reports).
- 48 Other sources of revenue often include special events, private foundation grants, and city or county contracts. For example, the Downtown Berkeley Association BID uses non-property assessment revenue (e.g., sponsorships and contracts) to underwrite a portion of the Executive Director's salary that is then allocated to policy advocacy activities. *See* Interview with John Caner, Executive Director, Downtown Berkeley Association (Apr. 21, 2017). *See also* DOWNTOWN BERKELEY PROP.-BASED IMPROVEMENT DIST., FINAL ENGINEER'S REPORT 6–7 (2016) (on file with clinic).
- 49 KRISTIN LOWELL INC., DOWNTOWN BERKELEY PROPERTY-BASED BUSINESS IMPROVEMENT DISTRICT (PBID): FINAL ENGINEER'S REPORT (2016); CIVITAS, TELEGRAPH PROPERTY AND BUSINESS IMPROVEMENT DISTRICT: MANAGEMENT DISTRICT PLAN AND ENGINEER'S REPORT (2016); KRISTIN LOWELL INC., DOWNTOWN CHICO PROPERTY BASED BUSINESS IMPROVEMENT DISTRICT: MANAGEMENT DISTRICT PLAN (2017); KRISTIN LOWELL INC., DOWNTOWN INDUSTRIAL DISTRICT BUSINESS IMPROVEMENT DISTRICT ENGINEER'S REPORT (2014); URBAN TRANSFORMATION, MANAGEMENT DISTRICT PLAN FOR THE JACK LONDON [BUSINESS] IMPROVEMENT [MANAGEMENT] DISTRICT (JLID) 2013–OAKLAND, CALIFORNIA (2013); MARCO LI MANDRI, NEW CITY AM., INC., FINAL PLAN: MANAGEMENT DISTRICT PLAN FOR THE LAKE MERRITT/UPTOWN COMMUNITY BENEFIT DISTRICT–OAKLAND, CALIFORNIA (2008); CIVITAS, DOWNTOWN SACRAMENTO PROPERTY AND BUSINESS IMPROVEMENT DISTRICT: 2016–2025 MANAGEMENT DISTRICT PLAN & ENGINEER'S REPORT–DISTRICT NO. 2014–06 (2014) [hereinafter DOWNTOWN SACRAMENTO PBID MANAGEMENT DISTRICT PLAN & ENGINEER'S REPORT]; CIVITAS, 2017–2026 MIDTOWN SACRAMENTO PROPERTY AND BUSINESS IMPROVEMENT DISTRICT: MANAGEMENT DISTRICT PLAN AND ENGINEER'S REPORT–DISTRICT NO. 2016–02 (2015) [hereinafter MIDTOWN SACRAMENTO PBID MANAGEMENT DISTRICT PLAN & ENGINEER'S REPORT]; SHILTS CONSULTANTS, INC., CITY OF SAN DIEGO DOWNTOWN PROPERTY & BUSINESS IMPROVEMENT DISTRICT: ENGINEER'S REPORT AND MANAGEMENT PLAN–FISCAL YEAR 2005–06 AND DISTRICT RENEWAL (2005); NBS, CITY AND COUNTY OF SAN FRANCISCO CIVIC CENTER COMMUNITY BENEFIT DISTRICT: ENGINEER'S REPORT (rev. 2010) [hereinafter SAN FRANCISCO CIVIC CENTER COMMUNITY BENEFIT DISTRICT ENGINEER'S REPORT]; NBS, CITY AND COUNTY OF SAN FRANCISCO GREATER UNION SQUARE BUSINESS IMPROVEMENT DISTRICT: ENGINEER'S REPORT (2009) (all reports on file with clinic). We calculated the percentages for each location by dividing the total assessment revenue from publicly owned properties by the total assessment revenue for that year.
- 50 GREATER UNION SQUARE BUS. IMPROVEMENT DIST., MANAGEMENT PLAN (2009) (on file with clinic); *Individual Lobbyist Detail: Flood, Karin*, CITY & COUNTY OF S.F. ETHICS COMMISSION, <https://netfile.com/lobbyistpub/#/sfo/detail/lobbyist/SFO-153758/2018/2> (last visited Mar. 13, 2018) (identifying USBID Executive Director Karin Flood as a lobbyist for the Union Square Business Improvement District).
- 51 *See* DOWNTOWN INDUS. DIST. BUS. IMPROVEMENT DIST., MANAGEMENT DISTRICT PLAN 3 (May 2014) (on file with clinic). CCEA, QUARTERLY REPORT 5 (Apr. 2016) (the Central City East Association, or CCEA, is the nonprofit business corporation that administers the DIBID).
- 52 *See* Interview with Karin Flood, Executive Director, Union Square Business Improvement District (May 12, 2017) (on file with clinic) [hereinafter May 2017 Interview with Karin Flood]; interview with Savlan Hauser, Executive Director, Jack London Improvement District (Apr. 21, 2017) (on file with clinic) [hereinafter Apr. 2017 Interview with Savlan Hauser]; interview with Michael Ault, Executive Director, DSP; Danielle Biller, Deputy Director, DSP; and Dion Dwyer, Director of Community Services, DSP (Mar. 21, 2017) [hereinafter Mar. 2017 Interview with DSP] (on file with clinic) (stating that DSP's "policy position" is "100%" within the PBID budget and that the expenses are "predominantly" payroll).

- 53 CAL. STS. & HIGH. CODE § 36622; CAL. CONST. art. XIII D § 4(b). The local government has the burden to establish that publicly owned parcels do not receive a special benefit proportionate to the service being provided. CAL. CONST. art. XIII D § 4(a).
- 54 In response to a question about what the special benefits of opposing legislation like the Right to Rest Act (SB 876), DSP Executive Director Michael Ault replied: “[W]e really bring to them issues and when they communicate to us and we hear directly from them on potential impacts and what that would be . . . Staff’s role is to advocate for the priority issues that property owners do communicate to us.” Mar. 2017 Interview with DSP, *supra* note 52. Other executives described their BIDs as existing to represent the interest of property and business owners. *See* interview with John Caner, Executive Director, Downtown Berkeley Association (Apr. 21, 2017) (on file with clinic) (“We’ve tried to create a balance of being compassionate [to homeless people]. But you know, we do represent the property owners, the merchants.”). In describing assessment-funded policy advocacy, USBID Executive Director Karin Flood stated: “As Executive Director, I’m responsible for advocating for legislation that is going to make the area cleaner, safer, and promote business down here. [. . .] [F]irst and foremost we’re advocating for [. . .] policies that will improve the cleanliness and safety of Union Square.” May 2017 Interview with Karin Flood, *supra* note 52.
- 55 DOWNTOWN SACRAMENTO PBID MANAGEMENT DISTRICT PLAN & ENGINEER’S REPORT, *supra* note 49, at 6–7.
- 56 CAL. STS. & HIGH. CODE §§ 36632, 36628.
- 57 MIDTOWN SACRAMENTO PBID MANAGEMENT DISTRICT PLAN & ENGINEER’S REPORT, *supra* note 49, at 22.
- 58 *Id.*
- 59 SAN FRANCISCO CIVIC CENTER COMMUNITY BENEFIT DISTRICT ENGINEER’S REPORT, *supra* note 49, at 11. The Civic Center CBD specifies that “the areas of public streets, public avenues, public lanes, public roads, public drives, public easements and rights-of-way” are exempt from assessment. *Id.* at 9.
- 60 Email from Danielle Biller, Deputy Director, Downtown Sacramento Partnership, to author (May 3, 2017) (on file with clinic).
- 61 PAC Survey of California BIDs, *supra* note 32.
- 62 PAC California’s New Vagrancy Laws 2015 and PAC California’s New Vagrancy Laws 2016, *supra* note 28. We defined anti-homeless laws as restrictions on activities in four categories used by the National Law Center on Homelessness and Poverty: (1) sleeping, camping, lying and sitting, and vehicles; (2) loitering and vagrancy; (3) begging; and (4) food sharing. *See* NLCHP No Safe Place, *supra* note 31.
- 63 Figure 1 reflects patterns in cities with at least one BID responding to our survey for which PAC had data on anti-homeless ordinances. We calculated cumulative frequencies of BIDs and ordinances from 1975 to 2015.
- 64 PAC Survey of California BIDs, *supra* note 32.
- 65 *Id.*
- 66 *Id.* Panhandling is generally a protected form of speech under the First Amendment, though it may be subject to restrictions against aggressive acts or in certain areas (e.g., near ATMs). Loitering is also lawful unless it is with the intent to commit a crime or, for example, at a school or other place where children congregate. *See* Forced into Breaking the Law, *supra* note 32 (for a comprehensive consideration of panhandling and loitering laws).
- 67 PAC Survey of California BIDs, *supra* note 32.

- 68 We also found that BIDs collaborate closely with other local agencies like City sanitation departments and parks and recreation departments. *See* Complaint at 12, *L.A. Catholic Worker v. L.A. Downtown Indus. Dist.*, No. CV 14-07344 (C.D. Cal. Sept. 19, 2014), ECF No. 1 [hereinafter *Catholic Worker Complaint*] (describing collaboration between BID workers, the LAPD, and the City of Los Angeles’ Bureau of Street Services); Civic San Diego, Ordinance Adding Fault Line Park and Cortez Hill Park to Downtown Parks with 24-Hour Alcohol Bans and Nighttime Curfews – East Village and Cortez Neighborhoods of the Downtown Community Plan Area (May 27, 2015) (on file with clinic) (describing collaboration between San Diego’s East Village Association and the City’s Parks and Recreation Department to establish curfews aimed at preventing homeless people from sleeping in parks).
- 69 Emails between Midtown Business Association officials, Downtown Sacramento Partnership officials, SPD, and other city officials (Jan.–Oct. 2015) (on file with clinic).
- 70 *See e.g.*, Emails from Kelly Hoskin, Operations Director, Midtown Business Association, and Luis Villa, Clean & Safe Coordinator, Midtown Business Association, to Lieutenant Jason Bassett, SPD (Apr. 11, 2016) (on file with clinic).
- 71 *See, e.g.*, Email from Lieutenant Lisa Hinz, SPD, to David Plag, Executive Director, Del Paso Boulevard Partnership BID (Sept. 16, 2015) (on file with clinic) (“I will get Sgt Daryld [sic] Bryan this information. His team focuses on removal of homeless camps. They do amazing work and will get this cleaned up asap.”); email from Lieutenant Glen Faulkner, SPD, to Dawn Carlson, Program Manager of Power Inn Alliance BID (Jan. 5, 2015) (on file with clinic) (explaining a delay in a camp removal, stating: “Unfortunately, I have two officers who are dedicated full time to these camp eradications for all of downtown and the east area, so having to wait a couple days is not unusual.”).
- 72 Email from Marti Brown, Executive Director, North Franklin District Business Association, to Lieutenant Steve Oliveira, SPD (Jan. 30, 2015) (on file with clinic).
- 73 Email from Michael Ault, Executive Director, DSP, to Downtown Sacramento Partnership Board Members (Mar. 13, 2015).
- 74 USBID, Public Affairs & Advocacy Advisory Committee Meeting Minutes (Dec. 11, 2012) (on file with clinic); USBID, GRANT REPORT TO SILICON VALLEY COMMUNITY FOUNDATION (July 31, 2015) (on file with clinic). UNION SQUARE BUS. IMPROVEMENT DIST., 2014-2015 ANNUAL REPORT (2015), http://www.visitunionsquaresf.com/sites/default/files/_/PDFs/UnionSquareAnnualReport_FINAL_2015-08-07_highres.pdf. The grant included \$866,926 to fund additional 10B officers (off-duty police officers hired by businesses) for the Safe Shopper Directive, or the Holiday “Safe Shopper” program. *Id.* at 2. According to the report, 898 officers were added from the Tenderloin, Central, and Southern Police Stations. *Id.* at 4.
- 75 *See* Clean & Safe Chico, A Public Outreach Campaign Presentation at City Council Meeting (Mar. 5, 2013) (on file with clinic). In 2014, the Clean and Safe Group released a Police Staffing Strategic Plan calling for the addition of seventeen patrol officers, four detectives, four traffic cops, three street crime officers, and three school officers over four years. CLEAN & SAFE CHICO, POLICE STAFFING STRATEGIC PLAN (2014). In March 2016, the organization requested higher staffing levels. CLEAN & SAFE CHICO, POLICE STAFFING PLAN (2016).
- 76 Downtown Oakland & Lake Merritt/Uptown District Association, Activities Report Presentation (2015) (on file with clinic).
- 77 Email from Marti Brown, Executive Director, North Franklin District Business Association, to Lieutenant Steve Oliveira, SPD (June 19, 2015).

- 78 Email from Marti Brown, Executive Director, North Franklin District Business Association, to Lieutenant Steve Oliveira, SPD (Jan. 27, 2015).
- 79 Email from Lieutenant Mark Greenlee, SPD, to Captain William Champion, SPD (Mar. 26, 2015) (describing a message that was forwarded to several police officers as well as to Dion Dwyer of the Downtown Sacramento Partnership with regards to a downtown bus stop described as a “constant problem”).
- 80 Policy Advocacy Clinic, Berkeley Law, Univ. of Cal., Survey of 72 Homeless People in San Francisco, Chico, and Sacramento (Spring 2017) [hereinafter PAC Survey of Homeless People] (on file with clinic).
- 81 *Id.* Another homeless person in Sacramento said: “[In] this town, the cops harass the homeless. If you tell them you are homeless, it’s like a death sentence. They act like they have better things to do.” *Id.*
- 82 *Id.*
- 83 Catholic Worker Complaint, *supra* note 68. Plaintiffs also alleged violation of their civil rights through interference by threat, intimidation, or coercion, as well as conversion and trespass to personal property. *See id.* at 30–32. The *L.A. Catholic Worker* case was not the first case filed against the association that administered the DIBID for confiscation of homeless people’s property. In 1999, the American Civil Liberties Union filed a class action on behalf of a group of Skid Row residents alleging that BID private security guards confiscated, destroyed, and damaged their possessions without notice or warning, using the stated purpose of sidewalk cleanings and obstruction clearing. *Cervantes v. Int’l Servs., Inc.*, No. BC220226 (Cal. Super. Ct. 2002).
- 84 Stipulated Judgment, *L.A. Catholic Worker*, No. CV 14-07344 (outlining the terms of plaintiffs’ settlement agreement with DIBID); Request for Dismissal, *L.A. Catholic Worker*, No. CV 14-07344 (outlining the terms of plaintiffs’ settlement agreement with the City of Los Angeles).
- 85 Services Contract Agreement for the Downtown San Diego Partnership Clean and Safe Program with Universal Service (July 1, 2015) (on file with clinic).
- 86 Sara Calvosa, *R-Talk with Armed Guards*, SYNTHESIS WEEKLY (Nov. 11, 2013), <https://issuu.com/synthesischico/docs/synw2013>.
- 87 In 2015, four private security guards hired by the Hollywood Business Improvement District arrested a homeless person after he refused to get up from the sidewalk or answer the officers’ questions. Prior to the arrest, the officers informed the man that he was violating Los Angeles Municipal Code 41.18(d), which prohibited him from sitting on the sidewalk. The officers handcuffed the man, citing “private person’s arrest” as justification for doing so, and contacted the Los Angeles Police Department. *See ANDREWS INT’L PRIVATE SEC., ARREST REPORT*, BOOKING NO. 4508650 (Nov. 23, 2015).
- 88 PAC Survey of California BIDs, *supra* note 32.
- 89 Ambassadors may wear distinct uniforms to help visitors recognize them, and their duties may include cleaning streets and giving directions. *See GLYMAN, supra* note 30, at 11.
- 90 *See, e.g.*, Block by Block’s Public Safety Ambassadors. *See Cal. Dep’t of Consumer Affairs: BreEZe-Search by Name*, ST. OF CAL., <https://www.breeze.ca.gov/datamart/searchByName.do> (last visited Apr. 19, 2017) (identifying Block by Block, Inc., as a private patrol operator).
- 91 *Downtown Guides*, DOWNTOWN SACRAMENTO PARTNERSHIP, <https://downtownsac.org/services/safe-streets/downtown-guides/> (last visited Dec. 12, 2016).

- 92 Downtown Sacramento P'ship, Community Service Guide Position Description, https://downtownsac.org/wp-content/uploads/2015/01/Guide-Job-Description_updated-2.4.16-copy.pdf (last visited Apr. 19, 2017).
- 93 *Frequently Asked Questions*, Chico Downtown Ambassadors (on file with clinic); Memo from Clean & Safe to Chico City Council (June 2, 2014) (on file with clinic).
- 94 Service Agreement between USBID and Mydatt Services, Inc., dba Block by Block (Jan. 12, 2015) (on file with clinic).
- 95 Block by Block Proposal to USBID for Hospitality, Safety, Cleaning, and Ambassador Services 5 (Mar. 3, 2014) [hereinafter Block by Block Proposal to USBID] (on file with clinic).
- 96 *Id.* at 14.
- 97 Block by Block Proposal to Downtown Oakland & Lake Merritt-Uptown Associations for Security Services 7 (Nov. 1, 2012) (on file with clinic). Other BIDs that contract with BBB utilize similar databases. *See e.g.*, Block by Block Proposal to USBID, *supra* note 95, at 5, 7, 14.
- 98 Downtown Oakland & Lake Merritt/Uptown Community Benefit Districts, Top Quality of Life Issues Downtown (Jan. 20, 2015) (on file with clinic).
- 99 PAC Survey of Homeless People, *supra* note 80.
- 100 *Id.*
- 101 *Id.*
- 102 *Id.* Another homeless person in the Downtown Sacramento Partnership BID stated: "I've seen them take a guy who was sleeping and kick him." Yet another homeless person in Sacramento stated: "[Midtown Business Association], years ago, pepper sprayed me in my sleep." *Id.*
- 103 San Diego Partnership Clean & Safe Program, Citizen Complaint Form, Greg Weatherly (May 7, 2013) (stating that he was sitting up against a wall drinking orange juice when he was told "sternly and abruptly to vacate" by a private security guard.). San Diego Partnership Clean & Safe Program, Citizen Complaint Form, Phyllis Amos (Feb. 27, 2013) [hereinafter Phyllis Amos Citizen Complaint] ("It is my understanding that the people who ride around on bikes waking up the homeless are not supposed to put their hands on anyone. . . . If I'm breaking the law, a San Diego Police Officer is to do something about it—not some flunkie on a bike who has no badge, [and] who won't tell me his name [. . .]).
- 104 PAC Survey of California BIDs, *supra* note 32.
- 105 *Id.*
- 106 PAC Survey of Homeless People, *supra* note 80.
- 107 DOWNTOWN OAKLAND & LAKE MERRITT/UPTOWN DIST. ASS'N, EXECUTIVE MANAGEMENT ACTIVITIES REPORT (Dec. 2, 2014) (on file with clinic).
- 108 May 2017 Interview with Karin Flood, *supra* note 52. *See also Model*, DOWNTOWN STREETS TEAM, <http://streetsteam.org/model> (last visited Jan. 28, 2017).
- 109 HUD's Continuum of Care program provides funds "for nonprofit providers, State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness." *See Continuum of Care CoC Program*, HUD EXCHANGE, <https://www.hudexchange.info/programs/coc/> (last visited Dec. 15, 2016).

- 110 CTY. OF L.A. HOMELESS INITIATIVE, REGIONAL HOMELESSNESS ADVISORY COUNCIL AND IMPLEMENTATION COORDINATION (2016), <http://www.lacdc.org/docs/default-source/default-document-library/e17.pdf?sfvrsn=0>; *Los Angeles Continuum of Care*, L.A. HOMELESS SERV. AUTHORITY (Jan. 28, 2018), <https://www.lahsa.org/continuum-of-care>.
- 111 DOWNTOWN BERKELEY ASS'N, 2015 ANNUAL REPORT 4 (2015), http://www.downtownberkeley.com/docs/AnnualReport_2015_Web.pdf.
- 112 See DOWNTOWN SACRAMENTO P'SHIP, 2016 ANNUAL REPORT 19 (2016), https://www.downtownsac.org/wp-content/uploads/2015/01/DP_AnnualReport_FINAL.pdf; Mar. 2017 Interview with DSP, *supra* note 52. The Sacramento Midtown Association's 2016-2020 strategic plan states that the BID hopes to connect 20 homeless people to housing annually. MIDTOWN ASSOCIATION, MIDTOWN REPORT: JANUARY 1, 2012-JUNE 30, 2016, 12 (2016), http://exploremidtown.org/wp-content/uploads/2016/07/MA_AnnualReport-Spreads_.pdf.
- 113 HERRING & YARBROUGH, *supra* note 31.
- 114 *Id.* at 2.
- 115 PAC Survey of Homeless People, *supra* note 80. For example, one homeless person in Sacramento's Old Town neighborhood, where ambassadors are employed by the Downtown Sacramento Partnership, said that BID employees are "cordial with me now . . . [they] don't complain anymore about my ukulele playing." *Id.* A respondent from Chico said that BID employees "come and say hi . . . and ask me how I'm doing. Most of them know my name." *Id.*
- 116 Some homeless people reported that they already knew about the referred resources. *Id.* Two homeless people in Sacramento who reported being referred to the police characterized the referrals as unhelpful. *Id.*
- 117 *Id.*
- 118 *Id.*
- 119 *Id.*
- 120 Proponents of Measure S, *Argument in Favor of Measure S* (Aug. 17, 2012) (on file with clinic).
- 121 See Press Release, Clean and Safe Chico, Clean and Safe Chico Launches Generosity Campaign Urging Community to Give to Service Providers Not Panhandlers (Apr. 8, 2013) (on file with clinic).
- 122 Mar. 2017 Interview with DSP, *supra* note 52. Sacramento's Midtown Association BID opposed the repeal of the city's Unlawful Camping Ordinance in an email to the mayor and city council by arguing that "[r]epealing, suspending or scaling back the current ordinance will not help those experiencing homelessness. It will instead send the message that Sacramento is willing to allow those experiencing homelessness to be in unsafe conditions." Email from Emily Baime Michaels, Executive Director, Midtown Association, to Mayor and City Council (Feb. 9, 2016) (on file with clinic) (regarding Midtown's Position on Camping Ordinance).
- 123 JOSEPH COOTER, ET AL., POLICY ADVOCACY CLINIC, BERKELEY LAW, UNIV. OF CAL., DOES SIT-LIE WORK: WILL BERKELEY'S 'MEASURE S' INCREASE ECONOMIC ACTIVITY AND IMPROVE SERVICES TO HOMELESS PEOPLE? (2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165490. See also HERRING & YARBROUGH, *supra* note 31, at 67 (finding through a survey of 351 homeless people and in-depth interviews with 43 homeless people that police almost never offered services or referrals and that when they did, they primarily were in the form of a "pamphlet, one-night shelter bed, or sandwich").

- 124 FORREST STUART, DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW (2015). In San Francisco, researchers found that “criminalization failed to reduce homelessness in public space, but also perpetuates homelessness, racial and gender inequality, and poverty even once one has exited homelessness.” HERRING & YARBROUGH, *supra* note 31, at 1.
- 125 See e.g., DOWNTOWN OAKLAND & LAKE MERRITT/UPTOWN DIST. ASS’N, EXECUTIVE MANAGEMENT ACTIVITIES REPORT, *supra* note 107 (describing a partnership with Alameda County TRUST Clinic, located approximately two blocks outside BID boundaries).
- 126 See, e.g., Letter from Michael Ault, Executive Director, DSP, to Speaker of the California Assembly Toni Atkins (May 14, 2015) (on file with clinic) (supporting the Building Homes and Jobs Act, which would have generated increased funding for affordable housing including supportive housing, emergency shelters, and transitional housing). See also Letter from Michael Ault, Executive Director, DSP, to California State Senator Carol Liu (Apr. 2, 2015) (on file with clinic) (opposing SB 608, the Right to Rest Act, but announcing support for affordable housing).
- 127 For example, the Downtown San Diego Partnership BID established a 501(c)(3) organization called the Downtown San Diego Partnership Foundation which raises money to pay some housing expenses for newly housed individuals and also to provide bus tickets to homeless individuals with family members in other states. Andrew Keatts, *The Rise of the Downtown Partnership*, VOICE OF SAN DIEGO (June 6, 2013), <http://www.voiceofsandiego.org/mayoral-election-issues-2014/the-rise-of-the-downtown-partnership/>; see also *Clean & Safe Homeless Outreach*, DOWNTOWN SAN DIEGO PARTNERSHIP, <https://downtownsandiego.org/clean-and-safe/homeless-outreach/> (last visited Oct. 21, 2017).
- 128 Block by Block, Block by Block Safety Scenarios: Recommended Protocol for Common QOL Scenarios (undated) (on file with clinic).
- 129 *Id.*
- 130 *Id.*
- 131 Interview with Niki Jones & Erica Fonseca, Wind Youth Services (Nov. 16, 2016) [hereinafter Jones & Fonseca Nov. 2016 Interview] (on file with clinic) (describing an increase in visits post-move).
- 132 See Midtown Ass’n, Memo (Feb. 13, 2015 to Jan. 25, 2016) (on file with clinic). The memo is a list of incident reports pertaining to “hot spots” or areas for which the Midtown Association has received multiple requests for service. A BID ambassador generated the first incident report on February 13, 2015, only weeks after Wind’s move, stating that at around 8 p.m., there were “a couple of young adults behind the alley way of the Wind Center” who were being “disruptive.” Of 84 incident reports in the memo, 57 involve complaints of youth loitering, congregating, or hanging out at locations throughout Midtown. See also Jones & Fonseca Nov. 2016 Interview, *supra* note 131; Raheem F. Hosseini, *Wind Youth Services Drop-In Center for Homeless Youth Closes*, SACRAMENTO NEWS & REV. (June 5, 2014), <https://www.newsreview.com/sacramento/wind-youth-services-drop-in-center/content?oid=13620294>; Ryan Lillis, *Group Aiding Homeless Youth Gets Pushback in Midtown*, SACRAMENTO BEE (Apr. 19, 2015), <http://www.sacbee.com/news/local/news-columns-blogs/city-beat/article18957810.html> (reporting on the tension that emerged after Wind’s arrival in Midtown); Steph Rodriguez, *Midtown Business Association Hears Complaints Against Sacramento Provider for Homeless Youth*, SACRAMENTO NEWS & REV. (Apr. 23, 2015), <http://www.newsreview.com/sacramento/pageburner/blogs/post?oid=16935518> (describing complaints MBA received from Midtown residents and business owners since Wind opened and Wind’s response).

- 133 Midtown Ass'n, Memo, *supra* note 132 at 5–6 (summarizing the highlights of the BID's March 13, 2015, Executive Committee meeting).
- 134 Email from Emily Baime Michaels, Executive Director, Midtown Association, to Consuelo Hernandez, District Director, City of Sacramento Councilmember Steve Hansen (Mar. 4, 2015) (on file with clinic) (explaining that Ms. Michaels had just spoken with Captain Lester who informed her that based on the size of the facility, Wind could offer snacks without a permit).
- 135 Raheem Hosseini, *Sacramento's Only Youth Homeless Organization Is Moving Again*, SACRAMENTO NEWS & REV. (May 5, 2016), <https://www.newsreview.com/sacramento/sacramentos-only-youth-homeless-organization/content?oid=20807915>. Wind closed its shelter in February 2016 due to a funding shortage, which was resolved when Wind and Goodwill announced a partnership in May 2016. *See Wind Joins the Goodwill Family of Nonprofits*, WIND YOUTH SERV. (May 12, 2016), <https://www.windyouth.org/wind-joins-goodwill-family-nonprofits/>.
- 136 Email from Emily Baime Michaels, Executive Director, Midtown Association, to Mike Wiley, CEO/General Manager of Sacramento Regional Transit, and Keri Thomas, Regional Director of Community and Government Relations for Sutter Health (Aug. 3, 2015) (on file with clinic). Ms. Michaels stated she could be convinced to “assist with relocation costs if that creates a win for all.” The Midtown Association ended up authorizing a \$5,000 contribution to Wind's IT-related relocation expenses, though the actual cost to the BID ended up being \$650. Email from Emily Baime Michaels, Executive Director, Midtown Association, to Melinda Walker, Broker Agent, Property and Asset Manager at University Capital Management (Aug. 10, 2015) (on file with clinic); email from Emily Baime Michaels Executive Director, Midtown Association, to Hannah Gugino, Administrative Coordinator, Midtown Association (Apr. 25, 2016) (on file with clinic) (authorizing the \$5,000); email from Emily Baime Michaels, Executive Director, Midtown Association, to Sotiris Kolokotronis, Owner, SKK Developments, and Keri Thomas, Regional Director of Community and Government Relations for Sutter Health (May 31, 2016) (on file with clinic) (explaining that the final cost of the IT service was \$1,945, of which MBA paid a third).
- 137 Letter from Michael T. Ault, Executive Director, DSP, Patty Kleinknecht, Executive Director, River District, Emily Baime Michaels, Executive Director, Midtown Association, Michelle Smira Bratmiller, Administrator, R Street Partnership and Executive Director, Greater Broadway District, Bill Knowlton, Chairman, Stockton Boulevard Partnership, Nathan Ulsh, Executive Director, Franklin Blvd. Business Association, Tracey Schaal, Executive Director, Power Inn Alliance, Jenna Abbott, Executive Director Mack Road Partnership, David Plag, Executive Director, Del Paso Boulevard Partnership, and Corey A. De Roo, Executive Director, Florin Road Partnership to Mayor Darrell Steinberg and Sacramento City Councilmembers (July 31, 2017) (on file with clinic).
- 138 *Id.*
- 139 Cal. Const. art. XIII D §§ 2(i) (defining “special benefit” as a “particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large”), 4(a) (stating that “only special benefits are assessable”).
- 140 A person walking through a district with no intention of stopping at a business or other property benefits from enjoying a cleaner street. And an adjacent parcel benefits from the cleaner street it sits on. The benefits that these parties receive are “general benefits,” as neither members of the general public nor immediately adjacent parcels pay assessments to support the benefits they receive.

- 141 See *Golden Hill Neighborhood Assn. v. City of San Diego*, 199 Cal. App. 4th 416, 436–37 (Cal. Ct. App. 2011) (stating that Article XII D § 4 requires that the engineer’s report “estimate the *amount* of special benefit land-owners would receive from the project or service, as well as the *amount* of ‘general benefit’” (emphasis in original) because assessments may only fund the “proportionate share of cost to provide the special benefit”—“[t]hat is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service’s costs”) (citing *Beutz v. Cty. of Riverside*, 184 Cal. App. 4th 516 (Cal. Ct. App. 2010)).
- 142 E.g., Mar. 2017 Interview with DSP, *supra* note 52 (describing how DSP “brings” issues to property owners and listens to property owners’ communications on what issues are important to them).
- 143 See, e.g., *Golden Hill*, 199 Cal. App. 4th at 439.
- 144 In order to calculate the amount of general benefit accruing as a result of BID services, BIDs generally summed the benefits to non-assessed adjacent parcels of land and the benefits to members of the public at-large passing through the district with no intention of engaging in parcel-related activities. BIDs did not account for potential “benefits” arising from their policy advocacy on local and state legislation, which affects members of the public at large when they are not within district boundaries. See *Golden Hill*, 199 Cal. App. 4th at 439 (describing benefits to the general public both within and outside the district as within the category of general benefits required to be calculated).
- 145 See *Town of Tiburon v. Bonander*, 180 Cal. App. 4th 1057, 1088–89 (Cal. App. Ct. 2009) (stating that many approaches to measure and apportion special benefits may be valid, but that they “must be both defensible and consistently applied”).
- 146 See *Golden Hill*, 199 Cal. App. 4th at 439.
- 147 *Id.* at 439. Cf. *Dahms v. Downtown Pomona Prop. & Bus. Improvement Dist.*, 174 Cal. App. 4th 708, 724 (Cal. Ct. App. 2009). The *Dahms* court interpreted the proportionality requirement of article XIII D, section 4(a) of the California Constitution as permitting BIDs to assess up to but not above the reasonable cost of directly providing a service to an assessed parcel. Thus, if a service provided directly to a parcel reasonably costs \$100,000 to provide and results in \$70,000 of additional general benefits, the BID may assess up to the reasonable cost of providing the service (\$100,000) but may not assess parcels for a total cost of \$170,000.
- 148 The court concluded that the Arts District BID’s expenditures on “economic development services”—like distribution of marketing materials to attract investment to the area and providing real estate investors with tours of the neighborhood—failed to provide any special benefits. See Hearing on Return of Writ; Motion of Petitioners for Attorney’s Fees at 1, *LC2121, LLC v. City of Los Angeles (Arts District Case)*, No. BS133012 (Cal. Super. Ct., May 10, 2013).
- 149 See *AB-2618 Property and Business Improvement Areas: Benefits Assessments—History*, CAL. LEGIS. INFO., http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140AB2618 (last visited Nov. 20, 2016).
- 150 Compare CAL. STS. & HIGH. CODE § 36615.5 (defining “special benefit” to mean “a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large” and clarifying that “special benefit” includes incidental or collateral effects that arise from improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed”), with CAL. CONST. art. XIII D § 2(i) (defining “special benefit” to mean “a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large.”).

- 151 See CAL. STS. & HIGH. CODE § 36000 (authorizing a tax on businesses and the limiting use of proceeds under the 1965 BID enabling statute to “the acquisition, construction or maintenance of parking facilities for the benefit of the area,” “decoration of any public place in the area,” “promotion of public events which are to take place on or in public places in the area,” “furnishing of music in any public place in the area,” and “the general promotion of retail trade activities in the area”). State law authorizes districts to lobby, but generally excludes assessment districts or improvement districts from the definition of “district.” CAL. GOVT. CODE § 56036 (the Cortese-Knox-Hertzberg Act, which governs changes in the boundaries and organization of cities, explicitly excludes BIDs from both the definition of “district” and “special district”). The only BIDs in existence at the time the section was last amended in 1971 were established under the 1965 BID law and were authorized only to spend revenue from business licenses on a limited array of retail-promoting purposes. *Id.* §§ 50023, 50001 (authorizing county, city, and city and county lobbying), 53060.5 (authorizing district lobbying), 56036 (excluding assessment districts and improvement districts from the definition of district).
- 152 For example, state or local officers may not use or permit others to use public resources for “campaign activity,” defined to include non-incidental, non-minimal contributions, and expenditures made “[f]or purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.” State or local officers are also prohibited from using or permitting others to use public resources for “personal purposes,” defined as non-incidental, non-minimal “activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business.” See CAL. GOVT. CODE §§ 8314, 82015, 82025. Furthermore, local agencies may not use public funds in support of or opposition to local or state candidates or ballot measure campaigns. *Id.* § 54964 (general statutory prohibition on use of funds by “officer[s], employee[s], and consultant[s]” of local agencies).
- 153 *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976) (en banc) (stating further that “past authorities have not drawn such a distinction between ‘ballot measure’ and ‘candidate’ campaigning; to date the judicial decisions have uniformly held that the use of public funds for campaign expenses is as improper in bond issues or other non-candidate elections as in candidate elections.”). See also *Vargas v. City of Salinas*, 47 Cal. 4th 1, 27-30 (2009).
- 154 See Section II.A.
- 155 The Downtown Industrial BID in Los Angeles, for example, made donations to several political candidates in 2002 and 2015. See L.A. City Ethics Comm’n, Contributions of the Central City East Association (Oct. 4, 2016) (on file with clinic). As a lobbyist on behalf of the Union Square BID in San Francisco, Executive Director Karin Flood made \$3,000 in various political contributions to state and local candidates between April 2016 and December 2017. See City & Cty. of S.F. Ethics Comm’n, *Political Contributions of Karin Flood* (Mar. 18, 2018) (on file with clinic). See also *supra* note 36 and accompanying text.
- 156 CAL. GOVT. CODE § 50023 (authorizing city and county lobbying when it “present[s] information to aid the passage of legislation which the legislative body deems beneficial to the local agency or to prevent the passage of legislation which the legislative body deems detrimental to the local agency”).
- 157 CAL. STS. & HIGHS. CODE § 36606(e) (1994 law defining ‘activities’ to include a security provision). Cf. *id.* § 36513 (1989 law defining ‘activities’), and *id.* § 36000 (1965 law enumerating permitted expenditures).
- 158 See CAL. BUS. & PROF. CODE § 7582.1. The Department sets forth licensing standards, including training requirements and disciplinary review committees for on-the-ground employees. *Id.* §§ 7580 *et seq.*

- 159 See Joint Request for Order of Dismissal at 2, 16, *L.A. Catholic Worker v. L.A. Downtown Indus. Dist.*, No. CV 14-07344 (C.D. Cal. Sept. 19, 2014) [hereinafter *Catholic Worker Joint Request for Order of Dismissal*] (LAPD training bulletin clarifying that “BIDs are separate and distinct from the City. BID officers, employees, and representatives are not employees or agents of the City. Importantly, BID employees have no more authority than private citizens to enforce the law.”) See CAL. PEN. CODE § 830.1 (enumerating persons who are peace officers). See also *id.* §§ 834 (authority for citizen’s arrest), 837 (circumstances under which a private person may arrest). Cf. *id.* § 836 (circumstances under which a peace officer may arrest).
- 160 See Phyllis Amos Citizen Complaint, *supra* note 103.
- 161 See e.g. Marla Dickerson, *Fashion District Group Agrees to Settle Homeless Lawsuit*, L.A. TIMES (Aug. 14, 2001), <http://articles.latimes.com/2001/aug/14/business/fi-33812> (discussing a settlement with homeless residents in Los Angeles’ Fashion District BID, where residents alleged harassment and assault by BID private security guards); Darwin Bond Graham, *Downtown Berkeley Association Security Ambassador Fired After Assault Caught on Camera*, EAST BAY EXPRESS (Mar. 26, 2016), <https://www.eastbayexpress.com/SevenDays/archives/2015/03/26/downtown-berkeley-association-security-ambassador-fired-after-assault-caught-on-camera> (discussing a video of a Downtown Berkeley Association Ambassador “starting a fight” with a homeless person).
- 162 See, e.g., *Bennion v. City of Los Angeles*, No. C637718 (L.A. Super. Ct. 1987) (resulting in a restraining order against the City’s seizures of property and requiring City employees to post prominent, written notices 12 hours before removing property thought to be abandoned); *Justin v. City of Los Angeles*, No. CV 00-12352 (C.D. Cal. Nov. 20, 2001) (resulting in a permanent injunction against the City incorporating the terms of the *Bennion* restraining order and holding that confiscated property must be stored for 90 days); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1024–25 (9th Cir. 2012) (enjoining the City from “seizing property in Skid Row absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband”); *Mitchell v. City of Los Angeles*, No. 16-01750 (C.D. Cal. Mar. 17, 2016) (enjoining the City from destroying homeless people’s property pursuant to arrests or street cleanups and requiring 90-day storage for confiscated property). For an argument that BID agents should be considered state actors, see Heather Barr, *More Like Disneyland: State Action*, 42 U.S.C. § 1983, and *Business Improvement Districts in New York*, 28 COLUM. HUM. RTS. L. REV. 393, 409, 412–428 (1997). For a discussion of the state action doctrine as it applies to private security generally, see David Alan Sklansky, *The Private Police*, 46 UCLA L. REV. 1165; see also M. Rhead Enion, *Constitutional Limits on Private Policing and the State Allocation of Force*, 59 DUKE L.J. 519, 543 (2009) (arguing that Constitutional due process should apply when private police satisfy a public demand).
- 163 *Cervantes v. Int’l Servs., Inc.*, No. BC220226 (Cal. Super. Ct. 2002). The case was eventually settled through two separate agreements with the defendant BIDs and security firms. *Cervantes v. Int’l Servs., Inc., Statement of Decision Re: Final Approval of Class Action Settlement* (July 23, 2004).
- 164 *Catholic Worker Complaint*, *supra* note 68. The confiscation of homeless people’s belongings by BID personnel may also constitute property crimes. Pursuant to the *Catholic Worker* litigation, the Los Angeles Police Department issued an internal training bulletin to instruct officers to treat the BID’s taking or confiscation of homeless people’s property like any other claims of theft or robbery. *Catholic Worker Joint Request for Order of Dismissal*, *supra* note 161, at 2, 16 (“If a [homeless] person claims that a BID officer or employee has improperly taken or confiscated his or her personal belongings, Department personnel should treat that claim the same as any other report consistent with LAPD policy and procedure.”).

- 165** Jones v. City of Los Angeles, 444 F.3d 1118, 1132 (9th Cir. 2006), *vacated as moot*, 505 F.3d 1006 (9th Cir. 2007); Pottinger v. City of Miami, 40 F.3d 1155, 1156 (11th Cir. 1994).
- 166** See, e.g., Forced into Breaking the Law, *supra* note 31 at 19–34 (for a detailed discussion of how enforcement of state and local laws criminalizing homelessness may violate state, federal, and international law).
- 167** *Id.* at 27–31.
- 168** CAL. CONST. art. XIII D § 4.
- 169** CAL. STS. & HIGH. CODE § 36670.
- 170** Golden Hill Neighborhood Assn. v. City of San Diego, 199 Cal. App. 4th 416, 439 (Cal. Ct. App. 2011); Hearing on Return of Writ; Motion of Petitioners for Attorney’s Fees at 1, LC2121, LLC v. City of Los Angeles (Arts District Case), No. BS133012 (Cal. Super. Ct., May 10, 2013).
- 171** Apr. 2017 Interview with Savlan Hauser, *supra* note 52.
- 172** May 2017 Interview with Karin Flood, *supra* note 52.

PHOTO CREDIT: (*Back cover*) Women from St. Mary's Center protesting in 2015
against the harassment of homeless people by the Union Square Business Improvement
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